

## **Fundamental Rights, Accountability and Transparency in European Governance of Migration: The Case of the European Border and Coast Guard Agency Frontex**

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**RESPOND**

## **Working Papers**

### **Global Migration: Consequences and Responses**

Paper 2020/59, July 2020

#### **Fundamental Rights, Accountability and Transparency in European Governance of Migration:**

#### **The Case of the European Border and Coast Guard Agency FRONTEX**

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RESPOND: Multilevel Governance  
of Migration and Beyond (770564)



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## List of abbreviations

CF	Consultative forum
BVMN	Border Violence Monitoring Network
CPT	Committee for the Prevention of Torture
ED	Executive Director
FRO	Fundamental Rights Officer
HWR	Human Rights Watch
JRO	Joint Return operation
MB	Management Board
MRCC	Maritime Rescue Control Centre
SIR	Serious Incident Report

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## Executive Summary

This report is the final report of work package 2, 'border management and migration control' of the Respond project, an EU funded research project on the multi-level governance of mass migration in Europe and beyond. As part of this focus, this report analyses and interrogates the accountability and transparency regime of the European Union's border agency Frontex.

Frontex was established as a European Union agency in the field of border, migration and asylum policies in 2004 and began operating in 2005. Over the last 15 years, the mandate of the agency, originally tasked with coordinating the operational management of the European Union's external border through support to the EU's member states, has expanded significantly. Through a series of reforms, most notably in 2007, and 2016 and 2019, the agency has become a pivotal actor in what is referred to as 'European Integrated Border Management'. Most notably, its most recent reform has given the agency the mandate to recruit up to 10.000 staff to be deployed at the EU's external border, thus creating, for the first time, a significant executive agency with operational capabilities on the level of the European Union.

Since the creation of the agency and its first operations, there has been significant concern, both from the European Parliament as well as NGOs and other civil society organisations that the executive mandate of the agency has not been counterbalanced by effective mechanisms for accountability, particularly with respect to fundamental rights. Since 2011, monitoring and accountability mechanisms for addressing fundamental rights violations have been established and developed. There are currently six mechanisms; the Serious Incident Reporting system, Forced Return Monitoring, the Fundamental Rights Officer, the Consultative Forum, the Individual Complaints Mechanism, and the Fundamental Rights Monitors, the last having been introduced in 2019 and being not yet fully operational at the time of writing of this report.

To an extent, the Frontex monitoring and accountability regime has improved since 2011 through legislative change, thus strengthening the above mechanisms. The findings of the report however show that despite the continued expansion and strengthening of monitoring and accountability mechanisms since 2016, these efforts have again not resulted in an effective system for monitoring, investigating, addressing, and preventing fundamental rights violations at Europe's external borders. The findings of this report suggest there are several reasons for this:

1. The legal framework relating to fundamental rights and accountability mechanisms is often vague. This ranges from omitting references to specific operational activities to unclear provisions on the possible actions relating to investigation and remedies of fundamental rights violations.
2. The expansion of the agency's mandate and increased complexity of their operational responsibilities and tasks has further complicated matters of allocating responsibility for fundamental rights violations. The legal framework of Frontex does not help in establishing responsibility, especially in contexts where both Frontex and national border management actors are involved. This is compounded by the fact that establishing such responsibility relies on operational plans, chains of control and command and decisions which are generally not known publicly.



3. All key monitoring mechanisms are characterised by significant deficiencies which can be attributed to their weak design, the vagueness of legal provisions and often vague internal guidance, as well as an over-reliance on the implementation of provisions both by Frontex and national authorities.
4. The investigation of complaints and incidents of fundamental rights violations remains the responsibility of member states. However, such systems often lack independence and impartiality and provide weak safeguards to complainants. Internal documents also suggest weak cooperation and communication between national authorities and Frontex. Further, the current legal framework does not provide for avenues to address systemic violations of fundamental rights by member states, while the only relevant provisions for withdrawing or not launching operations have never been used.
5. The legal framework's accountability mechanisms are internal to Frontex, and lack independence from the agency. At the level of monitoring on the ground, this raises concerns regarding the role of Frontex staff and deployed officers in recording fundamental rights violation.
6. Since the internal accountability system is administrative, there is little scope for meaningful remedies. Victims of fundamental rights violations can seek remedies in national and EU Courts, but this would require considerable resources and is subject to complex legal arrangements.
7. The role of the Fundamental Rights Officer is limited by lack of resources, lack of decision-making powers, and again vague provisions in areas such as investigating complaints.
8. While the Consultative Forum has in theory the greatest potential for acting as an independent body within Frontex, it is constrained by its lack of resources and time, and working arrangements relating to the provision of information.
9. Both bodies are constrained by the fact that decision making powers remain with the Executive Director. This has resulted in key recommendations aiming at safeguarding fundamental rights – as well as preventing the Agency's complicity in violations – being rejected.
10. The Serious Incident Reporting Mechanism is reliant on Frontex deployed personnel who might not have the appropriate training, expertise or willingness to identify and report fundamental rights violations. This results in a low number of reported incidents which contrasts with the reporting of external actors such as NGOs and human rights bodies. Significant weaknesses are observed in relation to Joint Returns Operations.
11. The use of the Individual Complaints Mechanism has been limited, since few complaints were submitted since 2016. Possible reasons for this include restrictive legal provisions, the lack of dissemination and accessibility, and insufficient information and forms being available in operational areas. Further, only few complaints have been deemed admissibly by the Fundamental Rights Officer.
12. There are significant shortcomings in relation to reporting and investigating violations committed by Frontex deployed officers.

Our findings and analysis raise significant questions regarding the commitment of Frontex to complying with fundamental rights obligations within its operations. Frontex consistently engages in strategies and practices aiming at avoiding responsibility and accountability, which include:

13. An instrumental approach to information produced from their internal reporting systems, which could serve as the basis of decisions despite its inherent weakness; disregarding inconvenient knowledge such as recommendations by CF and FRO; remaining silent on knowledge gleaned from surveillance capabilities that could shed light on incidents of violations of fundamental rights.
14. While maintaining that their presence in operational areas enhances compliance with fundamental rights, Frontex have also claimed to be absent from specific areas where fundamental rights violations occur systematically. Two such examples are the transit zone at the Hungarian-Serbian border and the 'frontline' at the Greek-Turkish border.
15. Frontex still deflects responsibility for fundamental rights violations to national authorities. This does not mean, however, that they adopt a critical stance towards such practices. On the contrary, there are public expressions of support which ignore systematic and extensive fundamental rights violations.
16. Frontex attempts to control the availability of information on its operational activities and fundamental rights accountability. Such tendencies are evident internally (towards the CF), towards institutions the Agency is politically accountable to such as the European Parliament, and externally towards the public through impeding access to internal documents under Regulation 1049/2001 and even adopting intimidatory tactics towards critics. The purposeful lack of transparency further weakens the Agency's accountability.

## About RESPOND

*RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond* is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and migration control, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centres, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies, but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

# 1. Introduction

This report is part of WP2 work package of RESPOND, which addresses border management and migration control, including European Union (EU) and domestic legal regimes, policy developments since 2011, the implementation of border management and migration control policies by EU member states and third countries, and how refugees and migrants experience and respond to the EU border management regime. Departing from existing work of the WP on national-level laws, policies and implementation in border management, this report focuses on the European Border and Coast Guard Agency Frontex. In particular, it explores one of the most controversial areas in the context of the Agency's mandate of 'protecting' the external borders of the European Union: accountability and transparency in addressing fundamental rights violations.

The activities of Frontex as an EU agency with executive powers in the field of border management have persistently raised concerns regarding the respect of human rights and refugee law in the context of operational activities. Since its establishment in 2004, Frontex has constantly been at the centre of controversies relating to practices that contributed to violations of fundamental rights of migrants at the external borders of the EU, in addition to violations of the principle of non-refoulement and access to asylum (Frelick, 2009; Keller et al., 2011; Correctiv, 2019; Marin, 2014b). While some progress has been made in strengthening the agency's fundamental rights obligations and practices, and establishing mechanisms for accounting for fundamental rights compliance and violations, the persistence of violations and the equally persistent involvement of Frontex in such controversies suggest that the question of accountability is far from resolved.

These controversies highlight two core issues at the heart of the Frontex's character as an EU agency. First, despite the expansion of the mandate of Frontex and their powers to act as a *de facto* law enforcement body at the borders of the EU, arrangements for holding them accountable have not necessarily reflected their increasing capabilities and powers. This fact is specifically pertinent not only for the domains of migration policy, fundamental rights and border management. Rather, Frontex being the first European Union agency endowed both with a standing corps of up to 10.000 officers (projected to be hired until 2027), as well as a significant mandate to oversee member state border management strategies, raises significant questions for the overall constitutional structure of the European Union, indicating an imbalance between the executive branch on the one hand, and the legislative and judicial branches on the other. Therefore, another important question this report attempts to answer is whether there is a functioning system of checks and balances in the EU regarding European Union agencies endowed with extensive executive powers.<sup>1</sup>

There is still, for example, no external or judicial oversight of the agency's activities. Secondly, the question of the accountability of Frontex is also linked to the broader politics of border management, and in particular to the relation between border management practices and human rights. While the main activities of Frontex are in the realm of border management, EU law bestows the Agency with obligations to monitor, respect and promote fundamental rights. Yet these responsibilities are difficult to reconcile with the political drive to prevent

<sup>1</sup> We note that at the time of finalising this report, a similar political controversy takes place in the United States, i.e. the deployment of federal law enforcement bodies, incidentally drawn from two federal agencies (Custom and Border Protection [CBP] and Immigration and Customs Enforcement [ICE]) in the city of Portland, Oregon, in order to curtail civil liberties and suppress protests for racial justice.

unauthorised entry into the European Union, manifested in a continuous increase and strengthening of border management capacities, technologies, and practices which entail an inherent risk of violating the rights of individuals, for example to seek asylum. Existing research on Frontex and fundamental rights accountability has evolved around two main areas. First, the exploration of legal responsibility of Frontex for fundamental rights violations, drawing on the relevant EU and international law (e.g. Fink, 2018; Mungianu, 2016; Papastavridis, 2010).

Secondly, accountability has been addressed in the context of research on European agencies, in particular JHA. Yet, as Carrera et al observed in 2013,

there is a lack of concrete knowledge and public information concerning the actual scope of their specific actions, which makes it difficult to carry out evidence-based daily monitoring and ex-post evaluation of their activities' (Carrera, den Hertog and Parkin, 2013, p.354)

One gap in existing literature of Frontex is research on the way the accountability mechanisms established to address the agency's responsibility for fundamental rights violations function in practice. While there is some analysis of the relevant legal arrangements, the design of the mechanisms and the shortcomings in the architecture of the current arrangements, there is little research on the implementation of these provisions and the function of the mechanisms. One of the reasons why is was suggested by by Carrera et al (2013): there is still little information on this domain of activities of the agency, not least because most sources of such information are contained in documents that are not easily accessible to the public. Further, assessing practices around the monitoring and investigation of fundamental rights violations would ideally involve ethnographic/anthropological observations of actors in the course of such activities. Yet, while researchers have explored the perceptions and attitudes of Frontex actors on human rights (Perkowski, 2018), closer observation is not easy because of security considerations and secrecy surrounding the activities of Frontex.

Our aim in this report is to address these gaps by examining in more depth the implementation of provisions on fundamental rights accountability. In order to do this we focus not only on the legal framework governing accountability provisions but on how provisions are acted upon through the existing monitoring and accountability mechanisms - the Fundamental Rights Officer (FRO), Consultative Forum (CF), Individual Complaints Mechanism, Forced Return Monitoring and Serious Incident Reporting systems - as well as by the Frontex executive. In order to achieve this, we undertook an extensive qualitative analysis of internal documents released through Freedom of Information (FOI) requests we submitted to the Frontex, as well as those released to other applicants and which are available online. We supplemented this core approach with interviews, informal conversations, insights from fieldwork and analysis of secondary sources. Based on this analysis we identify deficiencies in the existing arrangements and function of the monitoring and accountability mechanisms. Further, we identify five patterns in the responses of Frontex to criticisms and queries regarding its fundamental rights practices, interrogating their implications for the relation between border management and fundamental rights.

Following Bovens, we define accountability as

a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences (Bovens, 2007, p.450)

Accountability in this sense aims at ensuring ‘conformity between the values of a delegating body and those to whom powers are delegated’ (Curtin, 2005, p.87). Accountability mechanisms in extension can be understood as arrangements that enable the scrutiny of actions and their compliance with legal standards – in the context of this report fundamental rights obligations arising from EU and international law, as well as the legal framework of Frontex (Gkliati and Rosenfeldt, 2018; Wolff and Schout, 2013). Since many of the activities of Frontex are conducted in contexts that are not accessible to the public and documentation on such activities is not publicly available, research on the agency also raises issues of transparency, broadly perceived as the principle of conducting activities as openly as possible (Consolidated Version of the Treaty on the Functioning of the European Union, p.15(1); Gkliati and Rosenfeldt, 2018).

The report is structured as follows. After a discussion of our methodological approach, we begin by giving an introduction into the phenomenon of European Union agencies, the agencification of the Justice and Home Affairs field and an overview over the establishment, constitution and development of the European Union’s border agency Frontex. We then present the legal framework of the agency in terms of its fundamental rights commitments, describe its legal obligations and the internal mechanisms and implementations. As a second step, we discuss shortcomings and gaps in both the legal framework and the internal mechanisms and present existing obstacles to an effective accountability regime with respect to fundamental rights.

We then present two case studies. The first case study evolves around the decade-long presence of Frontex at the Greek-Turkish land border along the river Evros, the practice of pushbacks and the agency’s failure to address their prevalence. This is particularly relevant in light of the ongoing – at the time of writing – RABIT deployment launched in March 2020, after the Turkish government declared the border open and the Greek government reacted by temporarily suspending its asylum system and deploying additional security forces in the area.

The second case study focuses on internal recommendations for the agency to suspend operations in Hungary in order to avoid complicity in fundamental rights violations, which were however rejected by the management of the agency.

After these case studies, we present strategies employed by the agency in order to evade accountability. The report closes with recommendations.

## **2. Methods**

The findings presented in this report draw on a mix of methods used for data gathering and analysis. Equally, the report is partly based on prior work for the RESPOND project (Karamanidou and Kasperek, 2018b), as well as many years of research and field work both on the agency as well as on the Greek-Turkish land border in Evros.

Our analysis largely based on internal Frontex documents. We obtained some of these through *Freedom of Information* (FOI) requests pursuant to regulation (EC) 1049/2001 (‘regarding public access to European Parliament, Council and Commission documents’), we submit through the website asktheeu.org. Other documents were already published and archived in asktheeu.org and in the Aleph database of the *Organised Crime and Corruption*

*Reporting Project* (aleph.occrp.org) following requests by other applicants, and one document was provided to us by a third party. In early 2020, Frontex changed their procedure for public access to documents, restricting the use of transparency portals such as *asktheeu.org* and providing their own, albeit considerably less user-friendly interface. Moreover, the agency warns FOI applicants against sharing documents obtained through requests by invoking copyright law, a highly dubious practice for a tax-payer funded institution which also lacks legal clarity in terms of potential consequences. For this reason, we maintain the anonymity of the person who kindly shared an internal document with us. Additionally, the Frontex Data Protection framework stipulates that PII-data of persons lodging public access to document requests with the agency are retained for five years (Frontex, 2020h), a practice we asked the Data Protection Officer about but received no reply by the time of the publication of this report. Further, we realized that Frontex keeps track of our Freedom of Information, at least those submitted through the new portal. For the case study on Hungary, we also draw on material made available to us by two GCU colleagues, Daniel Gyollai and Umut Korkut, who submitted a FOI request in November 2018.

In addition to these documentary sources, we conducted several interviews. After some difficulties, we interviewed one of the Frontex Press Officers. However, while we requested access to Frontex staff involved in operation and the Fundamental Rights Office, this was not granted by the Press Office. Following the interview, we sent the press office a list of written questions regarding the Agency's operations at the Greek-Turkish border, which were answered by email. We further interviewed four members of organisations represented in the Consultative Forum and one human rights organisation. Because of the protracted lockdown in Scotland, we were not able to access the consent forms signed by the interviews and detailing their preferences regarding anonymity, as they are kept in a locked drawer in Glasgow Caledonian University. Therefore, we decided to anonymise all participants. In addition, we had informal phone conversations with an NGO employee and two journalists regarding the situation at the Greek-Turkish border. We also refer to them anonymously, given that information was shared in confidence, the political sensitivity of this issue and the potential repercussions for them. For the Evros case study, we also draw on two interviews with local police directors we interviewed in October 2018.

Moreover, we draw on a number of secondary sources, such as existing literature, reports, media articles and news, as well as the recordings of three LIBE committee meetings. We also draw on a webinar organized by the Dutch Green party, 'Under surveillance': Monitoring at the border' and the written answers from presenters that were circulated to participants afterwards. We note that these are not formal statements on behalf of the organisations of the presenters.

### 3. European Union Agencies, European Integration and the European Border Agency Frontex

In this section, we will introduce European Union agencies and discuss their role and significance for European integration. We then describe how agencies in the field of Justice and Home Affairs diverge from the more common regulatory agencies of the Single Market, in order to then introduce the European border agency Frontex.<sup>2</sup>

#### 3.1 European Union Agencies

The term *agency* is often used to describe generic governmental institutions across the globe. In the context of the European Union, it takes on a specific meaning. The reason for the specificity of European Union agencies lies in the constitution of the European Union as a politically highly integrated entity which however does not meet the threshold of a state in the traditional meaning of the concept. To mention but one example, agencies in the US are usually associated with its federal government and have been granted extensive executive powers, such as enforcing federal legislation and regulation.

In the European Union, with its lack of a recognisable executive entity in the common sense of government, European Union agencies take on a different character. They are usually closely associated with the *de facto* executive institution, i.e. the European Commission, however their particular constitution often reserves considerable influence for the governments of the member states, usually through the composition of their respective management boards. Additionally, their national counterparts, on whose cooperation and expertise European Union agencies often heavily rely, may also wield considerable influence. For this reason, European Union agencies are an interesting, but somewhat under-researched aspect of European integration, particularly from a multi-level governance perspective.

Apart from the fact that the competences and powers of the European Commission are in no way comparable to those of the US federal government, there is a second reason why European Union agencies are comparably weaker than their US counterparts: the so-called *Meroni doctrine*. It stems from two judgments of the European Court in 1957 and 1958 respectively and severely constrains the extent to which primary EU institutions may delegate regulatory powers to secondary institutions such as agencies.

Generally speaking, if US agencies are tasked with *regulation from above*, i.e. enforcing federal legislation in the states, European Union agencies tend to pursue *regulation from below*, i.e. the gradual convergence of existing member state regulatory frameworks into a European one. This practice is also referred to as *harmonisation* and does not preclude the fact that European Union agencies may also enforce European legislation. The practice of harmonisation is by no means confined to European Union agencies, but represents a much larger *modus operandi* of the European Union. European Union agencies however play an import role in this practice and may not only ‘support’ (the preferred term over ‘enforce’)

<sup>2</sup> The argument in this section of the report is loosely based on the PhD-Thesis (Dissertation) *Europe as Border. Eine genealogisch-ethnographische Regime-Rekonstruktion der Agentur Frontex in der Europäisierung des Grenzschutzes* [Europe as Border. A genealogical-ethnographical Regime Reconstruction of the Agency Frontex within the Europeanisation of Border Management] submitted to the Philosophical Faculty of Göttingen University by Bernd Kasperek and accepted by its Commission on the 26<sup>th</sup> of May 2020.



member states' implementation of EU regulation, but also play an important role in shaping the legislative process through the expertise they provide.

European Union agencies are distinct from the primary European institutions in that they are not created through the various treaties, but that they have been set up through European legislative acts, i.e. regulations. There is no generally agreed upon definition, particularly not a legal one, of what constitutes a European Union agency, and prior to the entering into force of the Lisbon Treaty (2009) – which formally abolished the temple architecture established through the Maastricht Treaty (1993) – the constitution and mandate of a particular agency would also be dependent on the respective pillar it was situated in. This led to a now obsolete differentiation between Community and Union agencies in the 1990s and 2000s. Most third pillar agencies of the original Justice and Home Affairs field such as Europol would remain in the renamed PJCC pillar (Police and Judicial Co-operation in Criminal Matters). The case of the European border agency Frontex however is yet a more particular one, as we will discuss later.

In 2020, there exist a plethora of agencies in the European Union. A European Union website<sup>3</sup> differentiates between 'decentralised agencies' which make up the vast bulk of European Union agencies, 'agencies under Common Security and Defence Policy' (i.e. part of the former second pillar), 'executive agencies' that are set up for specific tasks and for a limited period of time, as well as the special case of EURATOM agencies. EURATOM as one of the three original *European Communities* has neither been consolidated into the *European Community* nor the post-Lisbon *European Union*, however, largely shares their institutions (such as its Commission) with the *European Union*. *Decentralised agencies* are described on the website as follows:

Decentralised agencies contribute to the implementation of EU policies. They also support cooperation between the EU and national governments by pooling technical and specialist expertise from both the EU institutions and national authorities. Decentralised agencies are set up for an indefinite period and are located across the EU.

At the time of writing of this report, the website lists 34 decentralised agencies. The very first European agency that was founded is the *EURATOM supply agency* (for this particular case see Barry and Walters, 2003), founded in June 1960. A first wave of agencification took place in the 1970s, when two new agencies were created. However, agencification as a phenomenon structuring the emergent executive order of the European Union only gathered speed in the 1990s with the so-called second wave of agencification: The 1990s saw the creation of an additional nine agencies, in the 2000s (this sometimes is referred to as a third wave), 17 agencies were created, and since 2010, another eleven agencies were created or significantly expanded. Amongst the latter is the former 'European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union', which in 2016 was expanded and renamed into the 'European Border and Coast Guard Agency', however retaining its short name *Frontex*.

This brief overview of European Union agencies shows that the agency phenomenon in the European Union is highly heterogeneous and complicated. This makes it even more surprising that there exists only limited research into this field, which has, as we will discuss in the next

<sup>3</sup> [https://europa.eu/european-union/about-eu/agencies\\_en](https://europa.eu/european-union/about-eu/agencies_en)

section, important implications for the emergent executive order of the European Union as a supranational entity.

### **3.2 European Integration and European Union Agencies**

The agencification of the European Union after Maastricht may well be one of the most fundamental dynamics of supranational governance in the European Union, as it relates directly to its governmental modes. The European Union as a 'regulatory state' has been extensively analysed by Giandomenico Majone (e.g. Majone, 1994, 1996, 1997). For the purpose of this report, we highlight his conclusions on the resulting democratic deficit and legitimacy problem of the European Union (Majone, 1999). Majone contrasts the 'regulatory state' with the 'interventionist state', the former relying on 'extensive delegation of powers to independent institutions'. He argues that the independence of institutions such as regulatory agencies guarantees better policy outcome since independence is primarily perceived as inoculation from political short-term pressures. Majone however concedes that this creates a problem of democratic legitimacy, which he proposes to tackle by instituting a stronger accountability structure for such institutions instead of re-politicising the institutions.

Recent research focusing explicitly on European Union agencies (e.g. Geradin, Muñoz and Petit, 2005; Groenleer, 2009; Busuioc, Groenleer and Trondal, 2012) after Majone continues to focus on these two issues: for one an explanation for why agencification is occurring (e.g. Ekelund, 2010), for the other the accountability of agencies as a core issue. However, these issues are usually discussed as reciprocal. Agencification is then, similar to Majone's more general argument, explained with reference to the necessity, and even desirability of an increased power and performance of the European Union's executive branch, thus echoing e.g. the rationale of the European Commission's white paper on 'European governance' (Commission of the European Communities, 2001). The nominally de-politicised, i.e. independent or autonomous constitution of agencies, the perception that they are a-political in a sense of merely organising expert knowledge and networking technical experts across the continent is seldomly interrogated, but taken as granted – as stated in the above quote from the European Union website, which explicitly refers to 'technical and specialist expertise' that is made available through the agencies. Expert knowledge is here again juxtaposed with political motives, and the insulation of agencies from democratic control, or autonomy, is highlighted as a necessary and positive pre-condition for the agencies to pursue harmonisation in a pure technocratic manner, i.e. irrespective of political trends. (Semi)-autonomy is thus considered desirable.

Again similar to Majone's argument, the second issue of accountability then exclusively arises as a counter-balance to the desirable autonomy, and most studies (e.g. Groenleer, 2009) focus on taking an empirical account of the different accountability regimes instituted in the various European Union agencies and their respective performances. Accountability regimes are then theorised mainly along two lines. The first line applies the principal-agent approach of the new institutionalist school on European integration, originally designed to explain transfer of regulatory powers from member states to European Union institutions to the relationship between European Union institutions – usually the Commission – and their agencies. As we have already noted above, the outsized influence of member states in agencies necessitates an adjustment to this model of transfer of competencies, as one has to assume a multiplicity of principals (cr. Curtin, 2007). The other line references the approach

of 'experimentalist governance' (Sabel and Zeitlin, 2010), i.e. a mode of governance (empirically observed in the post-Amsterdam European Union) where institutions are given considerable leeway to experimentally implement policies, coupled with a strong evaluation process in order to assess the outcome against a previously established benchmark. Good governance in this model then is a constant repetition of a benchmark-implementation-evaluation cycle.

In the existing literature, agencies are viewed as an integral part of the emerging executive order of the European Union, and alternatives to agencification are seldomly discussed. One has to bear in mind that the existing research usually focuses on European Union agencies which are *de facto* regulatory agencies, such as the *European Labour Authority*, the *European Union Aviation Safety Agency*, the *European Chemicals Agency* or the *European Food Safety Authority*. The operations of these agencies can credibly be described as regulatory and as based on expertise and technical knowledge. In the broadest sense, these agencies are connected to the European project of the Single Market.

### 3.3 JHA Agencies and Accountability

The field of border, migration and asylum policies first became Europeanised, although rather in theory than in actual practice, through the Maastricht Treaty, situating it in the third pillar of Justice and Home Affairs. It was only through the Amsterdam Treaty that this field was shifted into the first pillar, i.e. that it was communitarised. However, this shift was further complicated by the fact that the communitarisation of border policies was largely an effect of the inclusion of the Schengen Agreements into the European Union framework. However, since Schengen dealt both with border policies as well as pan-European police cooperation, parts of Schengen were considered first pillar, while other parts remained in the third pillar (PJCC). Additionally, the Amsterdam Treaty contained a provision that would delay the application of *European Community* procedure, i.e. the inclusion of the European Commission and the European Parliament into the legislative process and adjudication through the Court of the European Union of matters in this field by a minimum of five years, thus guaranteeing the Council an outsized influence.

The years after the entering into force of the Amsterdam Treaty however coincide with the third wave of agencification in the wake of the European Commission's white paper on 'European governance', as well as with the proclamation of the 'Area of Freedom, Security and Justice' (AFSJ), the European Union's term for Justice and Home Affairs minus the third pillar. Hence, agencification as a process to render the European Union more actionable was also applied in this nascent field. Already in 1998, the *European Police Office* and the *Europol Drugs Unit* were combined into the *European Union Agency for Law Enforcement Cooperation* (Europol), and in 2002, *Eurojust*, an agency for judicial cooperation in criminal matters, was formed. The term 'cooperation' is noteworthy in that it underscores the limited operational mandate of these agencies. They were not to supplant member state police units and criminal prosecutors, but network their expertise across the European Union, thus nominally replicating the model of the existing, regulatory agencies.

Similarly, the 'European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union' (Frontex), founded in 2004, also carried the term 'cooperation' in its title. Jorrit Rijpma (2012), by highlighting the 'hybrid'

character of the agency, already points to the problem inherent in applying agencification to Justice and Home Affairs or AFSJ:

‘On the basis of its powers, one can characterise Frontex as an agency with a dual nature. On the one hand, it is endowed with the type of tasks that would normally be delegated to an EU agency, namely assisting the Commission and the member states in the implementation of an EU policy through the provision of technical and informational assistance, such as the provision of risk analysis and the development of common training standards. On the other hand, it has an important “operational” role, or more precisely it is endowed with the task of coordinating joint operational activity of national border guard authorities. In this respect it can be compared to agencies like Europol, which act in support of the activities of member state’ national law enforcement authorities’ (Rijpma, 2012, p.90)

Rijpma emphasises the ‘political nature’ of the agency’s tasks and the existing obstacles to coherent accountability, warning that ‘where member states’ border guards violate international (human rights) norms during joint operations, Frontex risks becoming an accomplice to such practices without the possibility of being held accountable’ (97). He concludes that the evolution of the agency does indeed fit the pattern of ‘experimentalist governance’ (cr. Pollak and Slominski, 2009; Monar, 2010) and argues that precisely because there is no constitutional framework for law enforcement cooperation in the EU, ‘it would be preferable to give priority to the development of Frontex’s more regulatory role, which is less likely to impact on individual rights and freedoms’ (98).

We disagree with two points of Rijpma’s assessment. The first is his characterisation of the agency’s risk analysis as regulatory. While some researchers would contend that the task of advocating risk analysis approached to border management and harmonising risk analysis techniques is indeed an effect of the agencies work in this field (Horii, 2016; Paul, 2017a; b, 2018), the mere provisioning of risk analysis *artefacts* to which Rijpma seems to allude should not be conflated with information gathering as carried out by other agencies. As even Frontex’ own Risk Analysis Unit admits (e.g. Frontex, 2012a, 2012b), risk analysis cannot be understood as anything akin to a rigorous scientific practice of data gathering, and should thus not be thought of as a practice like e.g. assessing the carcinogenicity of a particular herbicide as carried out by the *European Food Safety Authority*. If there is one finding that migration studies in all its heterogeneity would agree on, then it is that migration, and irregular migration in particular, is highly difficult to theorise and impossible to predict.

The second point of disagreement is his comparison of the operational activities of Frontex to those of Europol. Indeed, as Rijpma also discusses, the second Frontex regulation, the so-called RABIT regulation of 2007 (see below), expanded the legal mandate of national border guards employed in Frontex operations. Thus, quite early after the creation of the agency, its operational mandate had already surpassed that of Europol, which remains severely restricted in its operational mandate even today.

Rijpma however is entirely correct in marking the operation aspect of the agency’s mandate as problematic. Sergio Carrera, Leonhard den Hertog and Joanna Parkin present a similar assessment (2013). Comparing Frontex with two other JHA agencies (Europol and EASO), they also conclude that the development of Frontex fits the pattern of ‘experimentalist governance’. They present various examples of inadequate accountability mechanisms within Frontex, writing that

'these factors result in the paradoxical scenario whereby agency interventions of Frontex and Europol, despite being highly politicised, largely evade the full legal accountability and public scrutiny that would enable determining their precise responsibility and potential liability in cases of fundamental rights allegations before a court of law. Despite several reports about the functioning of the Agencies (particularly Frontex) and their weaknesses in terms of accountability for possible fundamental rights breaches, there is a lack of concrete knowledge and public information concerning the actual scope of their specific actions, which makes it difficult to carry out evidence-based daily monitoring and ex-post evaluation of their activities' (Carrera, den Hertog and Parkin, 2013, p.354)

They suggest that the usual balancing between autonomy and accountability, as exhibited in the bulk of research on European Union agencies, is not appropriate in the case of JHA agencies, and that it is highly problematic 'given that the activities of these agencies hold profound implications for human rights and liberties, some of which are even absolute in nature and accept no derogation or exception by public law enforcement authorities' (357). In turn, the authors argue a need for more independent monitoring of these agencies.

In conclusion, agencification in the former first pillar and the third pillar need to be approached differently. Agencification in the first pillar can be theorised as a double act of delegation of regulatory powers, first from the member states to European primary institutions and then from primary institutions to secondary ones such as agencies, stretching out over many decades. In the nascent field of JHA however, agencification indeed fits the model of 'experimentalist governance' much closer, since the first act of delegation from member states to European institutions was never completed, thus there was no well-defined mandate to be delegated to agencies. Indeed, the central role of the Council in the JHA field in the five-year-period post Amsterdam underscores this argument. Agencification in the JHA field thus followed an experimentalist path, and accountability and respect for fundamental rights were not integral parts of the benchmarks against which the agencies would be evaluated. In combination with the fact that the operations of JHA agencies are much more like to directly and negatively impact fundamental and unalienable rights of individuals, we conclude that apart from the democratic deficit shared by all European Union agencies, JHA agencies additionally suffer from a fundamental rights deficit. This particularly applies to the European border agency Frontex, which will now present in the next section.

### **3.4 Frontex: an overview of its mandate and accountability arrangements**

Frontex, i.e. the 'European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union', was created, after many years of discussions post Amsterdam (Monar, 2006), through Council Regulation (EC) No 2007/2004 of 26 October 2004 (Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union). As already noted, the Parliament was excluded from the legislative process. The regulation established the agency rather close to the regulatory model of non-JHA agencies, i.e. positing the agency as creating and maintaining a network of expertise in order to support the member states. Even if Rijpma's assessment of a dual or hybrid nature for the agency is correct, the non-regulatory aspects of

the agency, i.e. its operations, still followed this model. The agency was supposed to finance and coordinate pilot project and joint operations, the ultimate control over these operations would however rest with the hosting member state. The long-term effect of the agency would rather be a transformation of European border and migration management practices (Kasperek, 2010), particularly through the introduction and dissemination of new knowledge practices such as risk analysis (Neal, 2009). The precise name of the agency is noteworthy in that it conceptualises the external border of the European Union still as belonging to the member states of the European Union.

A mere three years later, in 2007, the mandate of the agency was expanded through Regulation (EC) 863/2007, creating the so-called *Rapid Border Intervention Teams* as an emergency or crisis reaction mechanism for the agency and at the same time addressing legal uncertainties concerning the executive powers of guest officers (Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers).

In 2011, the mandate of the agency was yet again reformed, through Regulation (EU) 1168/2011, strengthening the agency's access of technical equipment hitherto pledged by member states on a voluntary basis, introducing *European Border Guard Teams* as a semi-permanent mechanism, and creating the first wave of fundamental rights mechanisms such as the Fundamental Rights Officer and the Consultative Forum (Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union).

In 2014, yet another regulation was passed. Regulation (EU) No 656/2014 of 15 May 2014 *Establishing Rules for the Surveillance of the External Sea Borders in the Context of Operational Cooperation Coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union* did not alter the agency's mandate, but addressed the perception at the EU level that rules governing Frontex operations – particularly at sea – were necessary (Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union).

The real expansion and reconfiguration of the agency however took place in 2016 and 2019. Regulation (EU) 2016/1624 changed the name of the agency, it would become the *European Border and Coast Guard Agency*, and together with the national border and coast guard institutions of the member state form the *European Border and Coast Guard* (Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC). The regulation was a complete recast of the agency's mandate, introduced accountability to the Parliament, the Individual Complaints Mechanism, and most notably introduced, for the first time, a notion of shared responsibility between the European Union

and its member states over the European Union's external border (International Commission of Jurists, ECRE and Amnesty International, 2016; Tsourdi, 2020). To this end, a binding framework of 'European Integrated Border Management' was introduced (Karamanidou and Kasperek, 2018b). In 2019, Regulation (EU) 2019/1896 entered into force, vastly expanding the resources of the agency and mandating the agency to hire, until 2027, up to 10.000 own border guards which would be direct staff of the agency and were to be deployed along the external border (Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624).

Gkliati and Rosenfeld (2018) have analysed the accountability framework of the Agency with reference to different 'types' of accountability. Political accountability reflects legal arrangements making Frontex accountable to the European Parliament, allowing for the Executive Director to report to the European Parliament on the Agency's fundamental rights strategy and other areas of activity (2016/1624, Art 68; 2019/1896, Art 106). Legal accountability arises from EU primary law – specifically the TFEU – which designates potential avenues for victims of violations of fundamental rights to seek redress to national courts and the CJEU. As we further explore, legal accountability is complicated by the issue of establishing responsibility for fundamental rights situations which are characterized by the presence of many actors without clearly defined operational roles (Gkliati and Rosenfeldt, 2018).

Administrative accountability is the type most relevant to arrangements within the Frontex legal framework that pertain to fundamental rights. While Gkliati and Rosenfeldt consider to role of the Commission, European Ombudsman and management board as 'higher level' administrative bodies with powers, in theory at least, to hold Frontex to account, administrative accountability reflects the character of mechanisms established to monitor, investigate and address fundamental rights violations within the Frontex legal framework (Gkliati and Rosenfeldt, 2018; Rijpma, 2016). Specifically, these include the Fundamental Rights Officer, the Consultative Forum, the Individual complaints mechanism, the Forced return monitoring system and the Fundamental Rights Monitors. We also include the Serious incident Reporting system, which is not included in the legal framework, to these mechanisms since it is instrumental in documenting fundamental rights violations which subsequently can be addressed by national authorities and by the Frontex accountability mechanisms. Following an overview of the position of fundamental rights within Frontex and the relevant provisions in its legal framework, we discuss these mechanisms in more depth in the following sections.

## 4. Frontex and Fundamental Rights

Being a European Union agency, Frontex was from its inception bound by human and fundamental rights legislation, as stipulated by Article 6 of the Treaty on European Union and Treaty on the Functioning of the European Union (Consolidated Version of the Treaty on the Functioning of the European Union). Specifically, Frontex activities must comply with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union, which became legally binding when the Treaty of Lisbon entered into force in 2009 (Fink, 2018; Majcher, 2015; Keller et al., 2011; Moreno-Lax, 2018). Nevertheless, explicit references to fundamental rights were limited in the founding regulation 2007/2004 (Slominski, 2013), which stipulated solely that

This Regulation respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union. (Preamble 22).

The absence of strongly stated fundamental rights commitments reflected perceptions within the Agency at the time, which viewed its role as assisting member states which had primary responsibility for activities that engendered risks for human rights (Campesi, 2018). As Moreno-Lax (2018, p.123) observed

Rather than considering respect and protection of the EU acquis as a legal precondition for engagement in operational action, the Agency initially took human rights as a “strategic choice” [...], on the understanding that legal responsibility rests “primarily” with the Member States – it lacking executive powers of its own and being merely a facilitator/co-ordinator of Member States’ co-operation.

The Agency also attracted considerable criticism as, within a very weak legal framework, its operations at the external borders of the EU were complicit with violations of the rights to non-refoulement and access to asylum (Campesi, 2018; Marin, 2014b; Frelick, 2009; Lemberg-Pedersen, 2018; Papastavridis, 2010). In 2008, the European Parliament called

for the mandate of FRONTEX to explicitly include an obligation to meet international human rights standards and a duty towards asylum seekers in rescue operations on the high seas, and for cooperation with the United Nations High Commissioner for Refugees (UNHCR) and other relevant non-governmental organisations to be formalised within the mandate (European Parliament, 2008)

In response to such criticisms, Frontex adopted a series of measures such as appointing a liaison officer for the UNHCR in 2007, signing a cooperation agreement with the organisation the following year, and with the Fundamental Rights Agency in 2010 (Guild et al., 2011). A 2010 Council regulation introduced internal rules and guidance on maritime operations, including compliance with fundamental rights, which was however later challenged on formal grounds by the European Parliament and was eventually annulled by the CJEU (Guild et al., 2011). Measures in responses to criticisms were, at this stage, primarily internal to the organisation and often ad-hoc, informal and non-binding (Guild et al., 2011; Slominski, 2013). Concerns were also raised regarding the attribution of responsibility for fundamental rights violations as well as the monitoring and accountability mechanisms (Guild et al., 2011; Keller et al., 2011). Reports by NGOs continued to highlight controversial practices in the context of



joint land and sea border surveillance operations including, for example, participation in screening activities which could prevent access to asylum or sea surveillance operations that resulted in refoulement (Guild et al., 2011; European Ombudsman, 2013a; Marin, 2014a; Frelick, 2009; Keller et al., 2011; Maniar, 2016). In parallel, the identity-creation of Frontex relied on the adoption of humanitarian narratives – as opposed to narratives explicitly invoking human rights – both at the institutional level and at the level of deployed officers (Campesi, 2014; Pallister-Wilkins, 2015; Perkowski, 2018).

However, the strength of provisions on fundamental rights law in the legal framework governing Frontex increased over time (Campesi, 2014; Hruschka, 2020; Fernandez Rojo, 2016). Along with civil society organisations, the European Parliament was instrumental in applying pressure for the reform of the Frontex mandate (Campesi, 2018; Pascouau and Schumacher, 2014; Slominski, 2013). Consequently, the protection of fundamental rights during border management operations became more prominent in Frontex’s legal framework, and several mechanisms were introduced to enhance compliance with fundamental rights and monitoring of violations (Pascouau and Schumacher, 2014; Slominski, 2013). Regulation 1168/2011 explicitly referenced fundamental rights and aspects of asylum and refugee law that pertained to its operations:

This Regulation respects the fundamental rights and observes the principles recognised in particular by the TFEU and the Charter of Fundamental Rights, notably the right to human dignity, the prohibition of torture and of inhuman or degrading treatment or punishment, the right to liberty and security, the right to protection of personal data, the right to asylum, the principle of *non-refoulement*, the principle of non-discrimination, the rights of the child, and the right to an effective remedy. This Regulation should be applied by the Member States in accordance with those rights and principles. Any use of force should be in accordance with the national law of the host Member State, including the principles of necessity and proportionality (Preamble, 29)

Further, Regulation 1168/2011 required Frontex to develop a *Fundamental Rights Strategy* (FRS) in order to ‘monitor the respect for fundamental rights in all the activities of the Agency’ (Art 26a) and prevent fundamental rights violations during joint operations. Several mechanisms were introduced as part of this strategy: the Consultative Forum [CF] and the Fundamental Rights Officer [FRO], two Codes of Conduct, a general one and one specific to joint return operation (Art 2a; Art 9), fundamental rights training for Frontex deployed personnel and members of the national teams in joint operations (Art 5), a monitoring mechanism for joint return operations (Art 9) and an incident reporting mechanism (Preamble, 16; Art 3a; Art 8e). Further, provisions for cooperation with third countries, including financial agreements, specifically cited ‘respect for fundamental rights and human dignity’ (Preamble, 22; Art 9, par 1a; Art 14). The FRS provided further details on the operationalisation of these provisions, as well as reiterating the Agency’s commitment to mainstream fundamental rights into its activities. It was to be implemented by an Action Plan, which would be included into the Frontex programme of work (Frontex, 2011; Fernandez Rojo, 2016).

While these reforms strengthened fundamental rights obligations, concerns regarding violations, especially linked to maritime operations and surveillance, persisted (European Ombudsman, 2013a; Fernandez Rojo, 2016; Moreno-Lax, 2018). Policy provisions such as the FRS and the Code of Conduct remained largely non-binding (Slominski, 2013).

Contributions by civil society actors to the European Ombudsman own-initiative inquiry into the implementation of the 2011 provisions and the FRS highlighted the persistently weak accountability and monitoring arrangements (European Ombudsman, 2013a). The key issue raised in the inquiry was the absence of an individual complaints mechanism which would directly address violations against individuals during border operations (Fernandez Rojo, 2016). Frontex argued against the introduction of a complaints mechanism, claiming that only 'member states could perform activities which may affect individuals' rights', that the Agency did not have executive powers, and that existing mechanisms were sufficient for addressing violations of fundamental rights (European Ombudsman, 2013a; b; Fernandez Rojo, 2016). Despite support by the European Ombudsman, the Parliamentary Assembly of the Council of Europe (PACE) as well as by the CF, the introduction of a complaints mechanism was firmly rejected by Frontex (European Ombudsman, 2013a; Council of Europe, 2013; Frontex, 2014a). It was eventually introduced by Regulation 2016/1624, following a further European Parliament Resolution (Fernandez Rojo, 2016). By that time, Frontex management came to see the mechanism as a 'political priority' that would enhance transparency and accountability for Frontex (Frontex, 2016a) reflecting the earlier perceptions of fundamental rights as a 'strategic choice' (Moreno-Lax, 2018, p.123).

The European Ombudsman inquiry also recorded a number of issues put forward by civil society organisations, some of which were represented in the CF. Similarly to the 2011 report by the European Parliament, contributors raised concerns regarding weak accountability structures, the absence of independent monitoring mechanisms, the vagueness of legal provisions and internal guidance on fundamental rights, and weak arrangements on the investigation of fundamental rights violations (European Ombudsman, 2013a). As later sections will discuss, these concerns and issues persist to this date, despite subsequent legal and policy reforms.

In late 2016, Regulation 1168/2011 was replaced by Regulation 1624/2016. Provisions relating to compliance with fundamental rights and other relevant EU and international law were strengthened in this new regulation. On the one hand, this reflected the expansion of the operational mandate of the *European Border and Coast Guard*; on the other hand, it reflected efforts to strengthen the Agency's commitment to fundamental rights and monitoring mechanisms and the need for the Agency to gain legitimacy in the face of persistent criticisms on its human rights record (Campesi, 2018; Hruschka, 2020). In addition to the numerical increase of references to fundamental rights in the preamble, Regulation 2016/1624 is more explicit on the legislative frameworks that govern the Agency's activities:

The European Border and Coast Guard, which includes the Agency and the national authorities of Member States which are responsible for border management, including coast guards to the extent that they carry out border control tasks, should fulfil its tasks in full respect for fundamental rights, in particular the Charter of Fundamental Rights of the European Union ('the Charter'), the European Convention for the Protection of Human Rights and Fundamental Freedoms, relevant international law, including the United Nations Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Relating to the Status of Refugees and obligations related to access to international protection, in particular the principle of *non-refoulement*, the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea, and the International Convention on Maritime Search

and Rescue. In accordance with Union law and those instruments the Agency should assist Member States in conducting search and rescue operations in order to protect and save lives whenever and wherever so required (Preamble 47)

The principle of non-refoulement at sea, one of the key areas where the Agency's fundamental rights record has been controversial, is specifically referred to in Article 34 on the protection of fundamental rights, as well as in relation to the Agency's return operations. Regulation 2016/1624 further reiterated the key components of the Agency's FRS (Preamble, 48–49), while also introducing an individual complaints mechanism (Preamble 50; Art. 72). Despite the overall strengthening of the legal framework on fundamental rights, key issues such as the lack of independence of monitoring and accountability mechanisms and questions of responsibility remained (Campesi, 2018; International Commission of Jurists, ECRE and Amnesty International, 2016). Further, the expansion of Frontex activities, for example in coordinating return operations and involvement in third countries, as well as the changing character of maritime surveillance operations – including communications and cooperation with the Libyan coastguard –, involvement in hotspot registration centres since 2015, the increasing use of technologies of surveillance and data produced a further set of fundamental rights concerns (Campesi, 2018; FRA, 2016, 2018a; Monroy, 2020; Pallister-Wilkins, 2015; Statewatch and PICUM, 2019).

Fundamental rights became even more central to the Agency's activities in Regulation 2019/1896. Unlike its preceding regulation, it added a specific reference to compliance with Regulation 656/2014 *establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union in the Preamble* (par 20) and to the 'continuous and uniform application of Union Law, including the Union Acquis on Fundamental Rights' as an area of activity by the Agency (Art 5, par 4). Further, fundamental rights became a key component of the definition of *European Integrated Border Management* (Art 3, par 2) (Karamanidou and Kasperek, 2018b). In addition to reiterating the provisions of Regulation 2016/1624 on non-refoulement, Regulation 2019/1896 specifically cites forms of inhumane and degrading treatment, persecution and discrimination (Art 80, par 2) in line with the Charter of Fundamental Rights. Further, monitoring fundamental rights compliance across all activities at the external border became one of the Agency's key tasks (Art 10, par 1). While the provisions of this regulation have not been fully implemented at the time of writing this report (Council of the European Union, 2020b), many of the fundamental rights issues discussed earlier in this section remain of concern, and some – for example involving the storage and use of data and communication and exchange of information with the Libyan MRCC – have increased in significance (Alarm Phone et al., 2020; Statewatch and PICUM, 2019; Monroy, 2020).

## **4.1 The Legal Framework**

In the following sections we examine the key provisions in the three regulations corresponding to the time frame of this report in relation to three areas: Frontex operations, obligations of staff both directly employed by Frontex and deployed in its operations and the Agency and its executive bodies. While Regulation 2019/1896 has not been fully implemented at the time of writing, we examine its key provisions as they showcase developments in the domain of fundamental rights.

### 4.1.1 Provisions in Relation to Operational Activities

In contrast to Regulation 1168/2011, where references to fundamental rights in relation to Agency tasks were limited to return operations, in Regulations 2016/1624 and 2019/1896 fundamental rights are specifically referred in the context of a range of operations, reflecting the expansion of the Agency's mandate. Therefore, descriptions of tasks and responsibilities in operational plans must be 'with regard to the respect for fundamental rights' (2016/1624 Art. 16 (d); 2019/1896, Art. 38, par. 3(d)) and must contain procedures for receiving and transmitting complaints (Art. 16 (m); 2019/1896, Art. 38, par. 3(n)). Additionally, Regulation 2019/1896 contains a clause stipulating that operational plans must contain 'general instructions on how to ensure the safeguarding of fundamental rights during the operational activity of the Agency' (Art. 38 par. 3(l)). However, there are no references to fundamental rights in relation to operational plans for rapid border interventions (2016/1624, Art. 17; 2019/1896, Art. 39; International Commission of Jurists, ECRE and Amnesty International, 2016). In terms of sea border surveillance operations and search and rescue aspects that arise in this context, the relevant provisions refer specifically to Regulation (EU) No 656/2014 and international law (2016/1624 Art. 14, par. 2(e); 2019/1896 Art. 36, par. 2(3)).

Return operations, as in regulation 1168/2001 (Art. 9, par. 1a), must be conducted in compliance with fundamental rights (2016/1624, Art. 27 par. 1; 2019/1896, Art. 48, par. 1) and more specifically both the Agency and member states

shall ensure that the respect for fundamental rights, the principle of non-refoulement, and the proportionate use of means of constraints and the dignity of the returnee are guaranteed<sup>4</sup> during the entire return operation" (2019/1896, Art. 50, par 3; also Art. 28, par. 3).

The legal framework also stipulated that return operations must be monitored by forced return monitors (Regulation 1168/2011 Art. 9 par. 1b; Regulation 2016/1624 Art. 28, par. 6). Regulation 2016/1624, in addition included provisions for the constitution of pools of forced-return monitors (Art. 29). Regulation 2019/1896 introduced provisions for Fundamental Rights Monitors, a body within Frontex structures (Art. 51, see also section 6.2.6).

Further, activities and operations in third countries, both by the Agency and member states, must comply with fundamental rights frameworks (Regulation 1168/2011, Art. 14; 2016/1624 Art. 54; 2019/1896, Art. 72; Art. 73). Regulations 1168/2011 and 2016/1624 stipulated that liaison officers can be deployed in third countries where 'border management practices comply with minimum human right standards' (1168/2011 Art. 14, par 3; 2016/1624, par 1). However, this stipulation was not included in Regulation 2019/1896).

According to Article 25.4 of Regulation 2016/1624, a 'joint operation, rapid border intervention, pilot project, migration management support team deployment, return operation, return intervention or working arrangement' can be suspended if the Executive Director [ED] 'considers that there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist'. In Regulation 1168/2011, the relevant clause referred only to joint operations and pilot projects (Art. 3, par 1a). Regulation 2019/1896

<sup>4</sup> The reference to the 'dignity of the returnee was added in Regulation 2019/1896.

further stipulates that ‘any activity by the Agency’ may not be launched if the ED, in consultation with the FRO,

considers that there would already be serious reasons at the beginning of the activity to suspend or terminate it because it could lead to violations of fundamental rights or international protection obligations of a serious nature (Art. 46, par 5).

Further, regulations 2016/1624 (Art. 26) and 2019/1896 (Art. 47) stipulate that the evaluation of operation activities must include the observations of the FRO.

#### **4.1.2 Provisions in Relation to the Conduct of Staff**

Officers of member state forces and deployed at land and sea operation are obliged to respect fundamental rights (Regulation 1168, Art. 3b par. 4 ; 1624/2016 Art. 21 par. 5; Regulation 2019/1624, Art. 43, par. 4 ) with ‘access to asylum procedures and ‘human dignity’ being explicitly cited in Regulations 2016/1624 (Art. 21, par 50) and 2019/1896 (Art. 43, par. 4). Regulation 2016/1624 also stipulated that deployed staff ‘shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’ (Art. 21, par. 5), while Art. 43, par. 4 of 2019/1896 added further acts of discrimination that are prohibited such as on the grounds of membership of a minority and political beliefs<sup>5</sup>. Stipulations for compliance to fundamental rights and international law is reiterated in relation to specific roles such as liaison officers in EU member states (Art. 12, par. 3(e); Art. 31, par. 3(e)) - additionally tasked with liaising with the FRO in Regulation 2019/1896 (Art. 31, par. 3(f)) - and in third countries (Art. 55, par 3; Art. 77 par 3), members of migration management support teams (Art. 18, par. 4(a); Art. 40, par. 4(e)), and coordinating officers who are tasked with monitoring the implementation of fundamental rights aspects of the operational plans (Art. 22 par. 3(b); Art. 44, par. 3(b)). Deployed personnel, members of the national forces and Agency staff are also to be provided with training on fundamental rights and asylum law based on common core curricula (Regulation 2011/1168 Art. 5; Regulation 2016/1624, Art. 36; 2019/1896, Art. 62; Art. 55, par. 3; Art. 56, par. 3).

Personnel deployed in operations and members of national forces are subject to the disciplinary and legal frameworks of their home member state in case of fundamental rights violations or violations of the international protection obligations (Regulation 2016/1624; Art. 21 par. 5; Art. 72 par. 7; Regulation 2019/1896 Art. 111, par. 7). Employees of Frontex are subject to disciplinary measures by the Agency (Art. 72 par. 6; 2019/1896).

Provisions regarding fundamental rights are also reiterated in the two Codes of Conduct. Further, the Code of Conduct on return includes a requirement to report violations of fundamental rights (Frontex, 2018e, Art. 21). The General Code of Conduct includes a less clear stipulation that staff must report breaches of the legal framework and the Code of Conduct through ‘appropriate channels’, but does not specifically refer to the Serious Incident Reporting mechanism (Frontex, 2019d, Art. 7).

<sup>5</sup> ‘While performing their tasks and exercising their powers, they shall not discriminate against persons on the basis of any grounds such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation in line with Article 21 of the Charter’ (2019/1896, Art 43, par 4)

### **4.1.3. Provisions in Relation to the Agency, its Executive Director and Management Board**

The Agency and its ED are also bound by certain fundamental rights obligations in relation to their roles and responsibilities. The agency, for example, is given responsibility for providing training on Fundamental Rights to staff and developing common core curricula upon which the training is based (Regulation 2011/1168 Preamble 18; 2016/1624, Art. 36; 2019/1896 Preamble 51, 78; 2019/1896, Art. 62), although responsibilities for training national officers who might be deployed also lies with member states (2019/1896 Preamble 51; Art. 10 par. 1(w)). Cooperation between the Agency and MS with third countries must also comply with fundamental rights (Regulation 2016/1624, Art. 54; 2019/1896 Art. 71, 72). Concerns about return operations 'shall be communicated' to member states and the Commission (Art. 28, par. 7; 2019/1896, Art. 50, par. 6).

The ED has a range of specific responsibilities in relation to fundamental rights. In terms of accountability, the ED may be asked to report to the European Parliament on the Agency's fundamental rights strategy (2016/1624, Art. 68; 2019/1896, Art. 106). A key power concerns the suspension of operations (Regulation 1168/2011, Art. 3, par. 1a; Regulation 2016/1624, Art. 25 par 4; 2019/1896, Art. 46, par. 4) if there are persistent violations of fundamental rights. Regulation 2019/1896 extended this provision to not launching an operation (2019/1896, Art. 46, par. 5), stipulating that the ED

must take into account relevant information such as the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies in the areas covered by this Regulation (Art. 46, par. 6)

Regulation 2019/1896 further provided for the ED

to assess, prior to any operational activity of the Agency, whether there are violations of fundamental rights or international protection obligations that are of a serious nature or are likely to persist in accordance with Article 46(4) and (5) (Art. 106, par. 3(m)).

Regulation 2016/1624 also introduced a set of powers in relation to investigating fundamental rights violations. The executive director must follow up with complaints of fundamental rights violations against staff members, decide on disciplinary measures in consultation with the FRO, and can request that member states remove team members who committed fundamental rights violations (Art. 72 par. 6; par. 8; 2019/1896, par. 6, 8).

## **4.2 Fundamental Rights Monitoring and Accountability Mechanisms**

The establishment of mechanisms to advise on fundamental rights, monitor the Agency's compliance during its operations and address fundamental rights violations was a response to the widely observed shortcomings of the foundational regulation 2004/2007 and the Agency's practices during operations. The CF, FRO and Monitoring of Forced Returns were established by Regulation 1168/2011 and as part of the Agency's Fundamental Rights Strategy, while the individual complaints mechanism was introduced by Regulation

2016/1624. The Serious Incident Reporting mechanism was also established in the context of the Agency's Fundamental Rights Strategy (Pascouau and Schumacher, 2014) and is mentioned in Regulation 1168/2011, although not in subsequent ones.

#### **4.2.1 Consultative Forum**

The CF, established by Regulation 1168/2011 and operational since 2012 (Frontex, 2020a; Pascouau and Schumacher, 2014) is a primarily advisory body, tasked with advising the Management Board [MB] and the ED 'on the further development and implementation of the Fundamental Rights Strategy, Code of Conduct and common core curricula' and submitting an annual report on its activities (Art. 26a). Regulations 2016/1624 (Art. 70, par. 1) and 2019/1896 (Art. 108, par. 1) designate it as an independent body, providing 'advice on fundamental rights matters' to the ED and the MB. In practice, this advice takes the form of recommendations, opinions and annual reports, which are addressed at the ED and the MB (Frontex, 2014a). Recommendations and opinions can be issued at the initiative of the ED and/or the MB, or the CF itself (Frontex, 2014a).

The formal tasks of the CF have remained the same in regulations 2016/1624 and 2019/1896, with the addition of developing and advising on the individual complaints mechanism (2016/1624, Art. 70, par. 1). The CF's advisory tasks have included a wide range of areas: offering opinions on legislative proposals, such as the EBCGA and EUROSUR regulations;; on key policy areas such as the Agency's child protection strategy and gender mainstreaming activities; making recommendations on operational activities and border management practices, such as issuing advice to the Agency to withdraw from operations in Hungary in 2016; and contributing to the annual programme of work (Frontex, 2014a, 2017f, 2018f, 2019m).

The CF is composed of 15 members. These include two EU agencies, the European Asylum Support Office (EASO) and the Fundamental Rights Agency (FRA), intergovernmental organisations such as the UNHCR, IOM, the Council of Europe, OSCE, and since 2020 the UN Office for the High Commissioner for Human Rights, as well as non-governmental organisations such as Amnesty International, ECRE and the Jesuit Refugee Council (Giannetto, 2019; Frontex, 2020a; g). Organisations serve for a term of three years, beyond which they can be re-appointed. Most of the NGOs that are members of the CF are large organisations even though the European offices, which normally provide representation in the CF, can be quite small in terms of staff (Giannetto, 2019). While they are diverse in terms of their key activities – for example advocacy, service provision and litigation – most tend to be active across Europe and have substantial financial resources (Giannetto, 2019).

The composition of the CF is decided by the MB, following a proposal by the FRO in consultation with the ED, and on the basis of a number of criteria which have been amended over the years. Some, such as expertise, relevance, extent of representation in Europe, evidence-based approach and commitment to accountability, transparency and fundamental rights have remained the same in MB decisions between 2012 and 2019. In 2015, an 'obligation of professional secrecy' was added to the selection criteria (Frontex, 2015b). The open call for applications in 2019 introduced several new criteria, such as the 'degree of recognition of potential members' work by other relevant actors which are not members of the CF , past or ongoing involvement in EU projects or actions, and neutrality, impartiality and abstention from any political affiliations (Frontex, 2019i). However, it is not clear how the

selection process works in practice: for example, the application of the NGO SeaWatch, which is heavily involved in SAR operations in the Mediterranean, was rejected on the grounds that its 'operational focus did not match the Agency's need for expert and targeted advice on fundamental rights issues from across the Agency's enlarged mandate' and its 'knowledge and expertise' did not match the criteria for participation in the CF (Sea-Watch, 2019).

Another key procedural area is the transmission of information from Frontex to the CF. Regulation 1168/2011 merely referred to 'modalities of transmission of information', which were to be decided by the ED and the MB. This provision was implemented by informal arrangements, whereby members of the CF signed confidentiality agreements in exchange for access to a Frontex database and information being made available through the Frontex Consultative Forum Secretariat (Frontex, 2014a), which however operates under the structure of Frontex. The 2014 working arrangements stipulated that Frontex would make available to the CF Information necessary for its work, while the CF could request additional information if needed. The ED was to grant the request, unless it was considered unjustified (Frontex, 2014b). The CF could also be invited by Frontex to visit joined operations, subject to the approval of member states, including the one hosting the operation (Frontex, 2014a). In Regulation 2016/1624, these arrangements were formalised into a provision for the CF to have

effective access to all information concerning the respect for fundamental rights, including by carrying out on-the-spot visits to joint operations or rapid border interventions subject to the agreement of the host Member State, and to hotspot areas, return operations and return interventions (Art. 70, par. 4).

Regulation 2019/1896 further specified that information should be transferred in a 'timely' manner – reflecting persistent issues around the provision of information which we discuss in section 6.3 – and stipulated that refusals by member states to allow on-the-spot visits should be justified (Art. 111, par. 4). The purpose of such visits is not to monitor fundamental rights matters, but for the CF to 'learn the reality on the ground' and be in position to offer recommendations (Frontex, 2014a). Yet, such visits can only be initiated by Frontex itself (Frontex, 2014a).

#### **4.2.2 Fundamental Rights Officer**

The position of the FRO, also introduced by Regulation 1168/2011, was a further measure to strengthen fundamental rights monitoring and accountability. The FRO was to be 'independent in the performance of his/her duties' – a description which, as we'll discuss in sections 6.2, is contested (Art. 26a par. 3, also 2016/1624, par. 2). Further, the FRO would have access to all information concerning fundamental rights (Art. 26a, par 4, also 2016/1624 Preamble 49, Art. 71 par 3). Regulation 2016/1624 additionally specified that the FRO would be provided with 'adequate resources and staff corresponding to its mandate and size' (Preamble 48). A further task was the development of the individual complaints mechanism.

Regulation 1168/2011 contained little detail on the key tasks of the position, other than contributing observations for the evaluation of joint operations and pilot projects (Art. 3 par 3). Other documents suggest that the FRO was tasked with monitoring Frontex operations, including by *in situ* visits, receiving, providing fundamental rights assessments for proposed operations, monitoring and following up Serious Incident Reports [SIRs] and individual complaints, contributing to the revision of reporting and monitoring procedures, managing



records on reported incidents of fundamental rights violations, providing advice to the Risk Analysis Unit and contributing to the development of fundamental rights training for staff (Frontex, 2014a). However, they did not have a mandate for investigating individual complaints (European Ombudsman, 2013a).

Most of these activities were codified in Article 71 of Regulation 2016/1624, which stipulated that the FRO 'shall have the tasks of contributing to the Agency's fundamental rights strategy, of monitoring its compliance with fundamental rights and of promoting its respect of fundamental rights' (par. 1) and 'shall be consulted on the operational plans' (par. 3). Specifically, the FRO's responsibilities included advising the ED on the suspension of operations (Art. 25 par. 4); providing opinions for the evaluation of operational activities and operational plans, including return operations (Art. 26, Art. par. 8; Art. 73 par. 3); advising on the constitution of forced return monitors (Art. 29, par. 1), cooperation with third countries (Art. 34, par. 4) and common core curricula (Art. 36, par. 5). Beyond these activities, the FRO is involved in the administration of the individual complaints mechanism, which is described in section 4.2.3.

The role of the FRO was strengthened with Regulation 2019/1896, following the input of the European Parliament (Kilpatrick, 2020). In addition to the tasks above, the FRO can now provide advice on their own initiative (Art. 109, par. 2 (d)), opinions on working arrangements (Art. 109, par. 2(e) and (f)) and conduct investigations into the activities of the Agency (Art. 109, par. 2(b)). The independence of the FRO and their staff is reiterated, and the regulation stipulates for rules to be developed by the MB so as to guarantee the FRO's independence. Moreover, the regulation states that 'the management board shall ensure that action is taken with regard to recommendations of the fundamental rights officer' (Art. 109 par. 4).

### **4.2.3 The Individual Complaints Mechanism**

While provisions in the 2011 Fundamental Rights Strategy and Code of Conduct for return operations stipulated a right for individuals to submit complaints, no such mechanism was formally introduced until 2016.

Regulation 2016/1624 stipulated that

[a]ny person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation or return intervention and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency (Art. 72, par. 2).

Regulation 2019/1896 amended this clause by adding 'failure to act' by staff as well as their actions (2019/1896, Art. 111, par 2). Complaints can be submitted by individuals in writing directly to Frontex or through an online submission form<sup>6</sup> (Frontex, 2020f), designed by the FRO and made available in the agency's website and in hard copy during operations 'in languages that third-country nationals understand or are reasonably believed to understand' (2016/1624, Art. 72, par. 10, 2019/1896 Art. 111 par 10). Further, the Agency must ensure that information about the complaints procedure 'is readily available' (2016/1624, Art. 72, par.

<sup>6</sup> <https://microsite.frontex.europa.eu/en/Complaints>

10, 2019/1896 Art. 111 par. 10). Regulation 2019/1896 also stipulates that the form shall be easily accessible on mobile devices and that the Agency must make further guidance and assistance on the complaints procedure available to complainants (2019/1896 Art. 111 par. 10). Complaints can also be made regarding data protections issues (2016/1624, Art. 72, par. 6).

The procedure is managed by the FRO, who is responsible for liaising with the involved parties (2016/1624, par. 5; 2019/1896 Art. 111 par. 4). However, not all complaints are automatically admissible (Art. 72, par. 3). The FRO decides on their admissibility (2016/1624, Art. 72, par. 4; Art. 111 par. 4) based on a set of criteria: the complaint must refer to events 'that occurred or whose effects continued after 6 October 2016' (Frontex, 2020f) are substantiated and 'involving concrete fundamental rights violations' (2016/1624, Art. 72, par. 3; Art. 111 par. 3). The FRO then informs the complainant that the complaint has been registered and is in progress, and of responses to the complaint by national authorities (2016/1624, Art. 72 par. 5; Art. 111 par. 5). If the complaint is deemed inadmissible the complainant must be informed of the reasons why and be provided with information on other routes to pursue remedies (2016/1624, Art. 72 par. 5; Art. 111 par. 5). In addition, Regulation 2019/1896 stipulated the introduction of 'an appropriate procedure in cases where a complaint is declared inadmissible or unfounded' and stipulated that the FRO must reassess the complaint if new evidence is submitted (Art. 111 par. 5).

Admissible complaints about Frontex staff members are forwarded to the Executive Director, who in consultation with the FRO 'ensures appropriate follow up', decides on disciplinary measures and reports the outcomes of investigations to the FRO (2016/1624, Art. 72, par 6). If an admissible complaint concerns deployed Frontex officers or members of the forces of the host state, the FRO forwards the complaint to the relevant national authorities state authorities (Art. 72, par. 4)<sup>7</sup> whose responsibility to investigate and 'ensure appropriate follow up, including disciplinary measures as necessary or other measures in accordance with national law' (2016/1624 Art. 72 par. 7; Gkliati and Rosenfeldt, 2018). Member states are to report to the FRO on findings and follow up actions in response to complaints received 'within a determined timeframe' (Art. 72, par. 7). If there is no response from the member state, the regulation stipulates that the Agency 'shall follow up the matter' (Art. 72, par. 7). Regulation 2019/1886 further stipulates that if a member state 'within the determined time period (which is not determined in legislation), does not report back or provides only an inconclusive response, the FRO shall inform the executive director and the management board' (Art. 111, par. 7).

Regulation 2016/1624 stipulated that the FRO reports on information on the complaints mechanism and the outcome of individual complaints investigated by the Agency or member states to the executive director and to the management board and that the agency includes such information in its annual report (Art. 72, par. 9). The equivalent provision in Regulation 2019/1896 states that the FRO includes such information in their annual report (Art. 111, par. 9).

<sup>7</sup> However, the Frontex Code of Conduct currently available in the Frontex website states that it is the executive director who 'communicates the incident to the responsible Member state' (Art 21.2)

## 4.2.4 Serious Incidents Reporting

The 2011 FRS referred to creating

an effective reporting system to ensure that any incidents or serious risks regarding fundamental rights are immediately reported by any participating officer or Frontex staff member and can be acted upon (Frontex, 2011, par. 17)

The 2012 and 2013 European Ombudsman's inquiries similarly refer to the internal reporting system as a key mechanism for deployed staff to report fundamental rights violations. The two Codes of Conduct state the obligations of staff to report legal violations and violations of the code of conduct, in the case of the Code of Conduct on return specifically citing the Serious Incident Reporting system. A 2019 press release likewise stated that

The Code of Conduct obliges every officer who has reason to believe a provision of the code or fundamental rights was violated, to report this immediately to Frontex in form of a Serious Incident Report (SIR). (Frontex, 2019f)

Unlike the mechanisms discussed in the preceding sections, the Serious Incident Reporting system is not specifically oriented towards monitoring fundamental rights violations but towards recording a wide range of incidents (Frontex, 2016c). Only Regulation 1168/2011 refers to it as a mechanism to report and record fundamental rights violations (preamble 13). Yet, it is the key mechanism for reporting fundamental rights violations occurring during operations and monitoring the progress of related investigations by national authorities (Frontex, 2016c; e).

There is, however, very little publicly available information on how the system operates. The Frontex website states that 'the established procedure for dealing with such situations includes fact collection, assessment and final report to be prepared by an appointed SIR coordinator' (Frontex, 2020e). Annual reports also state that SIRs are submitted by 'the nominated responsible Frontex Coordinating Officers' who are 'responsible for collecting all relevant information in order to create/provide the SIR, following the provisions of the SIR SOP' (Frontex, 2016c, p.56, 2016e).

Internal documents released through FOI requests offer greater clarity regarding how Serious Incident Reporting works in practice. SIRs are submitted to the Frontex Situation Centre<sup>8</sup> by Frontex staff on the ground, who are either directly involved in an incident or obtain information about it, following the 'chain of command of the operational plan' (Frontex, 2016c). These provisions are reiterated in operational plans we obtained through freedom of information requests, although a 2018 operational plan had the relevant section redacted (Frontex, 2017k).

Three different types of SIR can be submitted: the initial SIR, within two hours of an incident occurring or becoming known, the SIR submitted based of developments on the incident, and the follow-up SIR, submitted in order to report updates (Frontex, 2016c). While the initial SIR can be submitted by any staff on the ground, SIRs and follow-up SIRs are submitted by divisions such as the international coordination centre (ICC) or the Frontex Situation Centre

<sup>8</sup> The Frontex Situation Centre is tasked with gathering and managing information on external borders, and act as a point of contact for operational matters. See also: <https://frontex.europa.eu/intelligence/information-management/>

(FSC) and more senior staff such as Frontex Support Officers (FSO), Frontex Operational Coordinators (FOC) or Frontex Coordinating Officers (FCO) (Frontex 2016 SIR). SIRs are to describe the incident that happened, its location, time and actors involved, the means used to carry out the action, the source of information, the actions taken by Frontex personnel and home state authorities, and possible consequences and effects of the event (Frontex, 2016c). A coordinator is appointed by the Frontex Situation centre, but the FRO can request to be appointed as a coordinator if the SIR concerns a fundamental rights violation (Frontex, 2016a).

In 2018, the Consultative Forum recommended the revision of the Serious reporting mechanism, based on the under-reporting of fundamental rights violations.

#### **4.2.5 Forced Return Monitors**

A mechanism for forced return monitors was introduced with regulation 1168/2011, which stipulated that the Code of Conduct had to 'provide for an effective forced-return monitoring system' of national and joint return operations (JROs) in compliance to the provisions of Article 8(6) of the Return directive 2008/115/EC (Art. 9, par. 1b). In practice, forced return monitoring was to be implemented by national bodies such as national ombudsperson organisations (Carrera and Stefan, 2018); However such mechanisms were not in place in some member states at the time of Regulation 2011/1168 coming into force (Frontex, 2014d). Frontex, at that stage, had no formal monitoring responsibilities for JROs, but was working with the designated national MS authorities to develop monitoring mechanisms (Frontex, 2014d).

Forced return monitoring was to be carried out on the basis of objective and transparent criteria and cover the whole JRO from the pre-departure phase until the hand-over of the returnees in the country of return (1168/2011 Art. 9 1b). The 2011 FRS stated that the forced return monitoring system was to be the responsibility of member states, although supported by Frontex, and that 'failing to meet this condition could ultimately lead to postponement or cancellation of the operation or of the participation of the respective Member State' (Frontex, 2011, par. 18). However, it also stated that Frontex would endeavour to include persons with a qualified fundamental rights expertise among participating staff (Frontex, 2011, par. 20). The objective of the monitoring mechanism was to focus on 'concrete incidents' as well as 'on more general consequences or impacts of the JO on fundamental rights' in order to inform JRO practices (Frontex, 2011, par. 20).

Regulation 2016/1624 expanded on the provisions of 2011/1186, introducing an obligation for forced return monitors to submit a report on each operation to the Executive Director, the FRO and the designated national mechanisms (Art. 28, par. 6). It further specified the establishment of a pool of forced return monitors, drawn from the national monitoring bodies (Art. 29, par. 1). The number and profile of the forced return monitors was to be determined by the Management Board, while member states were responsible for nominating forced return monitors who met the profile criteria, including child protection experts (Art. 29, par. 2). The selected forced return monitors would then be made available to Frontex, who in turn would make them available for deployment at the request of member states (Art. 29, par. 4). These provisions remained the same in regulation 2019/1896, with additional input stipulated from the FRO.

#### **4.2.6 Fundamental Rights Monitors**

Regulation 2019/1896 introduced a further monitoring mechanism, the Fundamental Rights Monitors, to be employed as statutory staff of the agency (Art. 110). The key tasks of the FRMs are

- (a) monitoring compliance with fundamental rights and providing advice and assistance on fundamental rights in the preparation, conduct and evaluation of the operational activities of the Agency which the FRO has assigned to them to monitor;
- (b) acting as forced-return monitors;
- (c) contributing to the training activities of the Agency on fundamental rights as provided for in Art. 62, including by providing training on fundamental rights. (Art. 110, par 2)

FRMs are to be assigned to operations by the FRO, whereby they are to conduct visits in the locations of operational activities and 'report to the FRO on any concerns related to possible violation of fundamental rights within the Agency's operational activities' (Art. 110 par. 3(d)). They are selected and appointed by the FRO (Art. 109, par 2 and 3), are 'independent in the performance of their duties' and trained in fundamental rights (Art. 110 par. 5, 7). At the time of writing, Frontex was in the process of recruiting FRMs, a process expected to be completed by the end of 2020. Further, Frontex signed a Service Level Agreement with FRA regarding the training of the team of monitors (Frontex, 2020b).

## **5. Key Issues with the Legal Framework**

### **5.1 Gaps and Omission in the Legal Framework**

Regulations 2016/1624 and 2019/1896 include extensive fundamental rights provisions regarding Frontex operations and activities, especially in comparison to the two earlier regulations (Campesi, 2018; Hruschka, 2020). However, the legal framework is often unclear in applying fundamental rights obligations in several areas of activity.

First, fundamental rights as enshrined in articles 6.3 of regulation 2016/1624 and 5.4 of regulation 2019/1896 are only related to the external borders of the EU. This wording excludes activities of Frontex at the internal borders of the EU, for example aimed at preventing secondary movements (FRA, 2018b). A further omission is the absence of references to the humanitarian exception clause in Council Directive 2002/90/EC (Art. 1, par. 2) in relation to anti-smuggling operations (FRA, 2018b). Other contentious areas include the absence of obligation for instructions issued by national authorities to comply with fundamental rights (Art. 82) and the lack of provisions for responses by Frontex staff in such instances (ECRE, 2018). While the coordinating officer is expected to report non-compliance to the Executive Director [ED], there is no specific description of actions to be taken, other than what implied in the provisions regarding termination of operations. This omission, for ECRE (2018), runs the risk of rendering Frontex complicit to fundamental rights violations.

The vulnerability assessment mechanism (2016/1624 Art. 13; 2019/1896, Art. 32) does not include fundamental rights in its scope, despite proposals to the contrary by both the Consultative Forum (CF) and external organisations (International Commission of Jurists, ECRE and Amnesty International, 2016; ECRE, 2018; Interview 3; Interview 4). Further, the definition of EIBM specifically refers to activities related to access to international protection (ECRE, 2018; International Commission of Jurists, ECRE and Amnesty International, 2016). SAR operations are also excluded from the scope of the vulnerability assessment mechanism (ECRE, 2018). In contrast, the Schengen Evaluation mechanism specifically takes into account fundamental rights (Regulation 1053/2013, Preamble 14). Moreover, there are no references to fundamental rights in the articles concerning the multiannual strategic policy cycle (Art. 8) integrated planning (Art. 9) and risk analysis (Art. 29). These omissions raise questions regarding the extent of mainstreaming fundamental rights protections into the Frontex legal framework (FRA, 2018b).

A further grey area concerns the role of private actors within Frontex operations. For example, local travel companies were contracted by Frontex in order to transport returnees from the Greek hotspots to Turkey or within Greece in the context of JROs (dm-aegean, 2018). Private companies are also increasingly used by Frontex to provide support to border surveillance operations, for example in the Central Mediterranean. Yet, the legal framework is unclear regarding the fundamental rights obligations of privately contracted actors, and whether there is a monitoring protocol regarding their activities (Fotiadis in 'Under surveillance': Monitoring at the border, 2020; RSA and Pro Asyl, 2019).

The provisions for suspension, termination and non-launch of operations in Regulation 2019/1896 still lack in specificity. In Regulation 2016/1624, the suspension of operations was left entirely to the discretion of the ED, and there were no specific criteria according to which such decisions could be made – for example by reference to individual complaints or the

Serious Incident Reporting system (International Commission of Jurists, ECRE and Amnesty International, 2016). While regulation 2019/1896 inserted a requirement to consider such information, the provision remains vague as it sets no procedures or criteria for deciding when fundamental rights violations are serious enough to warrant suspension, termination or not launching an operation (ECRE, 2018). These provisions were not extended to explicitly include operations in third countries (Frontex, 2016b; ECRE, 2018). Moreover, proposals to take into account reports by human rights bodies and NGOs when assessing fundamental rights violations (ECRE, 2018) were not adopted.

The key fundamental rights accountability mechanisms are also constrained by a number of omissions and grey areas. The provisions on the complaints mechanism, which remained largely unchanged between regulations 2016/1624 and 2019/1896, create a number of exclusions which limit the scope for submitting a complaint. While in Regulation 2019/1896 the relevant provisions have been extended to include those affected by omissions of border guards as well as actions, the possibility to submit a complaint is still limited to persons directly affected by such actions (ECRE, 2018). This places the burden of proof on the claimant, excludes actions of Frontex deployed personnel who work in coordinating roles, and does not provide for complaints to be submitted 'in the public interest', for example by NGOs and other organisations who often possess information on individual but also systematic fundamental rights violations (ECRE, 2018, p.22; Frontex, 2017f, 2016b). Other limitations include imposing a time frame of one year, not taking into account lack of access to legal assistance, and not providing an appeals mechanism against the Fundamental Rights Officer's [FRO] decisions on admissibility or final decisions (ECRE, 2018; FRA, 2018b; Frontex, 2016p; Moreno-Lax, 2018). A further shortcoming of the legal framework is the lack of detail regarding follow up actions by both the FRO and the ED, and of a specific time frame for member states to report back on complaints (ECRE, 2018; FRA, 2018b; Gkliati and Rosenfeldt, 2018). The only addition to these arrangements in Regulation 2019/1896, the responsibility of the FRO to inform the ED and the Management Board [MB], is still without any concrete references to actions they should undertake. Similar issues were noted in relation to the provisions for member states to report back on the monitoring of return operations (Frontex, 2014a).

Further, the roles of the FRO and the CF have remained limited and sometimes unclear. The monitoring role of both bodies is limited as neither of them have a constant presence at operational areas (Baldaccini cited in Strik and Fotiadis, 2020). While the FRO was granted investigative powers into any area of activity of the Agency by regulation 2019/1896 (Art 109, par 2(b)), these are not detailed in the text (Kilpatrick, 2020). Unlike the ED, they do not have significant decision-making powers. Neither is it specified what actions should the MB take on the recommendations of the FRO and the CF.

Further concerns have been raised, mainly by the CF and the FRO, on the clarity of guidance provided in documents such as the Codes of Conduct and operational plans. The CF, for example criticized the Code of Conduct on returns for not providing 'sufficiently detailed and concrete provisions on several essential issues' (Frontex, 2014a, p.22). While both Codes of Conduct were subsequently revised, the lack of detail and clarity has persisted (Moreno-Lax, 2018). The Serious Incident Reporting mechanism, while crucial for monitoring and reporting fundamental rights violations, is not governed by the legislative framework, and relies instead on internal guidance. In the context of sea border surveillance operations, the FRO noted the lack of clear guidance on assessing the personal circumstances, needs for international protection and vulnerabilities of intercepted persons (Frontex, 2017p).

## **5.2 Responsibility for Fundamental Rights Violations, Accountability and Legal Remedies**

The question of which actor is responsible for fundamental rights violation committed during operation at EU borders remains contested within the fundamental rights accountability regime of the EBCGA. It is beyond the scope of this report to explore how legal responsibility, and especially responsibility when more than one actors are involved, can be established in the case of Frontex joint operations by reference to European and international law. The implications of international treaties and human rights law for a range of Frontex activities have been explored by several scholars such as Fink (2018), Mungianu (2016), Papastavridis (2010), Majcher (2015) and Gkliati and Rosenfeld (2018). Rather, we focus on the limitations of the legal framework governing Frontex in accounting for the responsibility of the different actors involved in the operations and activities of the European Border and Coast Guard and their practical implications.

The position of Frontex, in particular before the introduction of its enhanced mandate with Regulation 2016/1624, was that member states were responsible for fundamental rights violations since the Agency did not have executive powers and its role was limited to support and coordination (Campesi, 2018; European Ombudsman, 2013a; ECRE, 2018). This was, for example, the position adopted in the context of the two European Ombudsman inquiries (European Ombudsman, 2013a; b) and in statements by the EDs (Laitinen, cited in Keller et al., 2011). Regulation 1168/2011 designated member states as the main actors performing border control and surveillance (Campesi, 2018; Majcher, 2015). In this context, the legal framework suggested that primary responsibility for fundamental rights violations lay with the member states (Carrera, den Hertog and Parkin, 2013; Fink, 2018).

This position has been challenged by various actors, including human rights bodies, NGOs and scholars (European Ombudsman, 2013a; Keller et al., 2011; Majcher, 2015). On the one hand, the issue of concern was the participation of Frontex teams in activities such as in the context of the RABIT deployment in Evros or interceptions in the Mediterranean which, while directed by member states, resulted in inhumane or degrading treatment, violations of the right to asylum and of the principle of non-refoulement, and the prohibition of collective expulsions (Majcher, 2015; Keller et al., 2011). On the other hand, even if Frontex teams are not directly involved or directly responsible for such actions, such violations were occurring within the area of Frontex joint operations (Majcher, 2015; Interview 4). The claim that Frontex had no responsibility over fundamental rights violations was challenged through its practical involvement in operations, contribution to the design of operational plans and its capacity as a coordinating agency (European Ombudsman, 2013b; Keller et al., 2011; Majcher, 2015).

Regulation 2016/1624 introduced for the first time the concept of implementing European Integrated Border Management as a shared responsibility between European Border and Coast Guard Agency – Frontex - and the relevant authorities of member states (Preamble, 6; Art. 5; ICJ et al 2016). Frontex competencies were enhanced even though operational command and control, and hence the responsibility for fundamental rights violations, remained largely with member states (Campesi, 2018). Regulation 2019/1896, however, while reiterating the primary responsibility of member states, accorded the agency executive powers and specified tasks to be undertaken by the Agency's statutory staff (ECRE, 2018). In theory at least, the expanded competencies of Frontex increase the possibility for being responsible both directly and indirectly for fundamental rights violations (Interview 4). Direct responsibility



could be incurred in tasks performed by Frontex staff, such as border checks. Moreover, and similar to the previous legal frameworks, Frontex may incur responsibility in fundamental rights violations through both omissions and actions. Regulation 2019/1896 specifically cites omissions to act as a ground for submitting complaints against personnel (Art. 111, par. 2). Providing assistance to member states through personnel and assets can also be argued to incur complicity to violations (Majcher, 2015; International Commission of Jurists, ECRE and Amnesty International, 2016). A further issue concerns knowledge about fundamental rights violations and failure to intervene or act (Fink, 2018; Majcher, 2015; Interview 6).

Yet, while the legal framework suggests a degree of shared responsibility, it remains difficult to establish the responsibility of each actor in practice. legal arrangements remain vague and do not clarify the nature and extent of the specific responsibilities of each actor. For instance, the language used in Regulations 2016/1624 and 2019/1896 to describe the allocation of responsibilities and tasks to the Agency is unclear. Terms used throughout the text of the regulations to describe Frontex tasks – such as ‘coordination’, ‘cooperation’, ‘facilitation’ and ‘support’ – are not defined (International Commission of Jurists, ECRE and Amnesty International, 2016; ECRE, 2018). As determining responsibility for fundamental rights violations depends on the exact powers of the different actors in given situations, the legal framework obscures rather than clarifies this task (International Commission of Jurists, ECRE and Amnesty International, 2016; Fink, 2018).

In reality, the allocation of responsibilities between Frontex and member state personnel in specific tasks (for example, border patrols) depends not only on the legal framework, but on range of internal documents such as operational plans (Fink, 2018; Majcher, 2015). These are not publicly available, therefore raising issues of transparency and accountability (Alarm Phone et al., 2020; Fink, 2018). Even though command and control in operational plans normally rests with member states (Interview 4), according to Fink, the dispersal of provisions across documents creates an unclear authority regime which further complicates the allocation of responsibility for fundamental rights violations. Further, reflecting the complexity of terms used in the regulations, operational plans invariably employ terms such as ‘instructions’ and ‘command’, which are also not defined and can be different from those used in the legal framework (Fink, 2018). The lack of clarity is increased by the fact that responsibilities depend heavily on decisions and practices taken by actors – both Frontex and national authorities – on the ground (Fink, 2018; Interview 4). Such decisions, which might involve instructions given to Frontex teams, might differ from operational plans and create further complexity regarding the responsibility of actors. One such example, described in the case study on the Greek-Turkish border, revolves around the contested presence of Frontex and national actors in a specific operational area and the vagueness regarding the actors responsible for this decision (see section 7.3).

While issues around responsibility have remained unresolved, the existing mechanisms designate distinct avenues for holding different actors accountable. As stated previously, member state authorities are responsible for investigating and remedying fundamental rights violations by members of national teams, while the ED has responsibility over those committed by Frontex staff. In essence, the Frontex accountability mechanisms are not designed to account for the shared responsibility in multi-actor situations (Fink, 2018).

In addition, given that the internal mechanisms of accountability are administrative, they are insufficient for providing remedies. The individual complaints mechanism, being internal and

not sufficiently independent, does not meet the requirements of good administration stipulated in article 41 of the Charter of Fundamental Rights and does not constitute an effective remedy in the sense of Article 47 of the same text (Carrera and Stefan, 2018; Gkliati and Rosenfeldt, 2018; Fernandez Rojo, 2016). Beyond its non-independent character, issues that we will discuss in the following sections suggest that it is neither effective nor accessible.

In the same vein, arrangements for seeking judicial remedies against Frontex and national actors are problematic. Provisions for civil liability render host member states responsible for damages incurred, which in the case of statutory staff can be reclaimed from Frontex (2016/1624, Art. 42; 2019/1896, Art. 84). Member states and their national border control bodies can be held accountable for fundamental rights violations in national courts and, failing this, in the European Court for Human Rights (ECRE, 2018; Gkliati and Rosenfeldt, 2018; Fink, 2018). As the EU itself has not yet acceded to the ECHR, remedies against it or its agencies cannot be sought in the ECtHR (ECRE, 2018; Fink, 2018). For the same reason, remedies against violations committed by Frontex staff can only be sought in the CJEU, and not the ECtHR (ECRE, 2018). The establishment of statutory staff further complicated issues around criminal liability. According to ECRE, unlike other categories of staff they do not have a 'home' member state, which might result in them being excluded from provisions of criminal liability. This, according to ECRE, presents an increased risk when staff are deployed in third countries which are beyond the scope of EU criminal liability law, and where status agreement might grant Frontex team members immunity from prosecution in countries of deployment (ECRE, 2018; Fotiadis, 2020; RSA and Pro Asyl, 2019).

The Agency can, in theory, be held accountable for its share of responsibility in fundamental rights violations before the CJEU either through a party requesting an annulment to review the legality of actions of EU bodies by or seeking damages under article 340(2) of the TFEU (ECRE, 2018; Gkliati and Rosenfeldt, 2018). However, the threshold for such cases to be accepted as constituting sufficiently serious breaches of the law is high, and the claimants might lack the resources to take legal action before the CJEU (ECRE, 2018; Fink, 2018). Therefore, it is doubtful if these provisions constitute effective remedies against fundamental rights violations involving the Agency or its staff (ECRE, 2018).

In essence, provisions for legal accountability and judicial remedies in the legal framework of the EBCGA are both limited and inaccessible. Further, they cannot easily account for fundamental rights violations involving shared responsibility of multiple actors since legal actions against different actors would have to be brought to different national and European courts (Fink, 2018; Gkliati and Rosenfeldt, 2018). Yet, the underlying issue, as an interviewee noted, is the constitution of agencies within the European Union:

there is really a problem of accountability, and retribution and responsibility, which is structural. This [Frontex] is an operational agency with executive powers, and the European Union model was not built for agencies or systems with direct powers on people, it was more on entities (Interview 4).

### **5.3 Administrative Character and Lack of Independence**

One of the main criticisms on the architecture of monitoring and accountability mechanisms is that they are primarily administrative, internal to Frontex and therefore not independent (Carrera and Stefan, 2018; ECRE, 2018; FRA, 2018b; Gkliati and Rosenfeldt, 2018). The CF,

FRO and Individual Complaints mechanism are internal to Frontex in the sense that they aim to ensure fundamental rights compliance within the Frontex legal framework (ECRE, 2018; Gkliati and Rosenfeldt, 2018). The FRO is directly employed by Frontex and appointed by the MB and the ED, and thus cannot be truly considered independent from Frontex (Fernandez Rojo, 2016; Gkliati and Rosenfeldt, 2018). Similarly, while the CF maintains a degree of independence through its primarily advisory role, it still operates within the Frontex framework and does not have support resources – such as a dedicated Secretariat – independent of Frontex (ECRE, 2018). During discussions on the then proposed Regulation 2016/1624, the CF itself raised concerns regarding these bodies ‘being included in the Frontex administrative structure’ as this ‘may hamper the independence of both bodies’ (Frontex, 2016b). Similarly, the return monitoring mechanism is partly reliant on Frontex personnel and partly on arrangements at the level of member states (Carrera and Stefan, 2018; FRA, 2018b; Hruschka, 2020). The Serious Incident Reporting system and Individual Complaints Mechanism are entirely internal to Frontex, and external review mechanisms are notably absent.

The role of the FRO is particularly significant. While a Frontex employee, they enjoy a degree of independence in the performance of their duties, which is explicitly referenced in Regulations 2016/1624 (Art 71, par 2) and 2019/1896 (Art 109, par 5). Yet, the position of an employee with duties to oversee the implementation of fundamental rights and investigate violations committed under the Agency’s authority in the context of operational activities is inherently tense (Carrera and Stefan, 2018). On the one hand, the CF members we interviewed were positive towards the FRO’s activities and that they maintain a good degree of independence. One respondent commented that they are ‘not part of the Frontex system. The ED cannot order her to do something or to leave something’ (Interview 2). This is also evidenced by reports which can be critical of practices on the ground and the shortcomings of arrangements and practices (e.g. Frontex, 2019j). Similar views were expressed regarding the role of the future Fundamental Rights Monitors, who ‘are selected by the Fundamental Rights Officer and report to her’ and therefore ‘they are also part of the more or less independent structure’ (Interview 2).

On the other hand, one interviewee commented that the FRO ‘needs more institutional guarantees of independence, because still she’s an employee ... There is a problem there structurally that should be solved, and the new regulation says it must be solved’ (Interview 4). Concerns were also raised by both the CF and external evaluators (Frontex, 2019m; b) regarding the independence of the CF Secretariat, which is appointed by the ED. Another interviewee commented that in practice the independence assumed in formal arrangements might be difficult to maintain. For example, in 2018 the then FRO took sick leave. Due to the additional absence of senior staff within the FRO office (see also section 6.2), the ED appointed a member of his own Cabinet as an interim FRO. The appointment of a member of staff still directly accountable to the ED, for the CF, was not in line with the provisions of Regulation 2016/1624 regarding the independence of the FRO, and did not

provide for the necessary conditions to ensure that the Fundamental Rights Officer ad interim and the Fundamental Rights Officer’s team maintain their independence in the performance of their duties and avoid potential conflicts of interest. (Frontex, 2019m)

Another interviewee noted the emphasis placed on the person rather than the mechanism of the FRO, stating that ‘if you get an FRO who is really a human rights person and knows operational stuff, then it makes a difference’ (Interview 4). A similar point was raised in relation to the Fundamental Rights Monitors, noting that independence might be difficult to maintain in practice:

at least in theory there is a sort of separation [...] of course [...] we will see how it plays out because if you have to do everyday with certain colleagues [...], of course you develop certain relations. That’s to be seen how impartiality can be insured [...] but [...] I trust the FRO to have a sharp look at that [...] that has also a lot to do with personality and [...] even the best practices in regulation can only be lived by individual personality but at least the current FRO is [...] somebody who can be trustable (Interview 2)

These comments highlight the shortcomings of the formal arrangements. While officially independence is guaranteed by the legal framework, the reality is more complex. Given this institutional set up, the views above suggest that the FRO’s independence needs to be enacted through the ability and character of the FRO as a person. Further, as Carrera and Stefan (2018) observed, the actions of the FRO might not always be in the Agency’s interest.

Another aspect undermining the independence of the FRO, individual complaints mechanism and potentially the Fundamental Rights Monitors concerns the power to make decisions and act on matters pertaining to fundamental rights violations. While the FRO can advise, monitor fundamental rights practices and manage complaints, they have no power to make decisions in relation to these matters (Carrera and Stefan, 2018; Fernandez Rojo, 2016; Gkliati and Rosenfeldt, 2018). Such powers are allocated to member states in the case of complaints against national forces, or the Executive Director in the case of complaints against staff (Fernandez Rojo, 2016; Giannetto, 2019; Gkliati and Rosenfeldt, 2018). The power to remove officers involved in violations of fundamental rights is similarly reserved to the member states or the ED (Art. 111; Fernandez Rojo, 2016), who also has the power to investigate staff members (Carrera and Stefan, 2018; ECRE, 2018). Similarly, while the FRO – as well as the the CF in its advisory capacity – can inform decisions to suspend or not launch an operation, the decision is taken by the Executive Director alone (2016/1624 Art. 25, par. 4; 2019/1896 Art. 46, par. 4, 5; Carrera and Stefan, 2018; Fernandez Rojo, 2016; Giannetto, 2019). This arrangement, along with the power to adopt or reject recommendations, as a following section will discuss, illustrates the limitations of FR mechanisms, since – as Fernandez Rojo (2016, p.233) succinctly observes – ‘the Executive Director [...] is not independent from the Agency’ and is appointed by the MB. Thus, to a large degree the function of the accountability mechanisms depends on the ED and member states (Carrera and Stefan, 2018).

The monitoring of JROs is similarly a mechanism whose independence is questionable. On the one hand, it is performed by monitors nominated by the bodies of member states, who are responsible for the monitoring of return operations in accordance with the provisions of the Returns directive and regulations 2016/1624 and 2019/1896 (see section 4.2.5; FRA, 2018b). The monitoring bodies include Ombudsperson offices and NGOs but also state inspectorates and bodies such as the Swedish Migration Agency, the German Federal Office for Migration and Refugees and the Slovakian Ministry of the Interior (FRA, 2019). These state bodies are not considered as independent from the state authorities responsible for return procedures and the implementation of returns (FRA, 2018b, 2019). On the other, JROs are monitored by

Frontex staff and member state personnel from the pool of forced-return monitors stipulated in Regulations 2016/1624 and 2019/1896. However, the monitors proposed for the Frontex pool may be different from those performing this task within member states, and as observed by M. Jaeger of the Nafplion Group, 'may be less independent, less qualified' ('Under surveillance': Monitoring at the border, 2020). These arrangements have been widely criticised for not being sufficiently independent since it is internal to Frontex and not institutionally independent (Council of Europe, 2019; ECRE, 2019; FRA, 2018b; 'Under surveillance': Monitoring at the border, 2020).

Most of our interviewees, the CF, as well as several external actors such as researchers, NGOs and human rights organisations have called for monitoring and accountability mechanisms that are independent from Frontex (ECRE, 2018; FRA, 2018b; Fernandez Rojo, 2016; Frontex, 2015a, 2016a; 'Under surveillance': Monitoring at the border, 2020). The CF, for example, stated its preference for an independent monitoring mechanism for returns (Frontex, 2016b). Yet, other than the involvement of national human rights bodies in return monitoring this has never materialised. While internal documents suggest that national human rights organisations were to be involved in managing complaints, this does not seem to have become the case (Frontex, 2016a).

## 6. Key Issues with Implementation of Monitoring and Accountability Mechanisms

### 6.1 Responding to Recommendations

The concentration of decision-making powers in the Executive Director [ED] and Management Board [MB], and the corresponding lack of power to take action over fundamental rights is also illustrated by responses to the recommendations made by the Consultative Forum [CF] and the Fundamental Rights Officer [FRO]. Frontex has acted on some of the recommendations of the CF, for example by adopting recommendations on the wording of the Code of Conduct (Frontex, 2014a, 2015c) or inserting a clause on fundamental rights protection into operation plans concerning Hungary and in general in operational plans (Frontex, 2016t, 2017p). Other recommendations were rejected – such as mainstreaming fundamental rights in the annual work programme (Frontex, 2014a), making fundamental rights a priority for the annual work programme (Frontex, 2014a) or refraining from using the term ‘illegal immigration’ (Frontex, 2014a, 2015c) – or were adopted later on, such as policies on the protection of children and vulnerable groups, and more pertinently, the individual complaints mechanism (Frontex, 2014a). A CF member observed that ‘at the moment there is no such obligation [to follow recommendations] so [...] when we draft recommendations [...] we don’t know what will happen’ (Interview 5).

Yet, internal documents also suggest that the recommendations and concerns of the CF and FRO were not fully taken into account and were even opposed by the MB (Frontex, 2016a). For instance, reasons given for not adopting a complaints mechanism included a reluctance of the MB to continuously change the rules, concerns raised by the representatives of MS in the MB that the mechanism could become an administrative burden, and that ‘if the complaints mechanism is not well set-up, then we will be inundated with complaints but the ones of *real* importance will not be handled properly’ (Frontex, 2016a). One reason for not adopting recommendations in the earlier years of the functioning of the CF seemed to be lack of clarity over the scope of its mandate (Dawson, 2017).

In 2014, the ED and the MB disagreed with the recommendations of the CF to such an extent that they felt obliged to add a section of comments explaining their rejection of the recommendations. The statement concerned first the recommendation of the CF on the Farmakonisi incident. A boat carrying migrants sunk near the Greek island of Farmakonisi, resulting in the drowning of 14 migrants. While the ED and the MB argued that the incident ‘did not occur within the framework of an operation coordinated by Frontex nor were Frontex coordinated assets involved’ (Frontex, 2015c, p.4), the CF felt it should address the implications of the incident for accountability in the context of serious fundamental rights violations (Frontex, 2015c, p.34; Dawson, 2017). The CF was particularly concerned over the decision of the Greek judicial authorities to stop the judicial inquiry into the actions of the Hellenic Coast Guard during the incident (Frontex, 2015c, p.34; Dawson, 2017). The second disagreement concerned recommendations made by the CF on the Mare Nostrum and Triton operations. According to the statement by the MB and ED, these confused the ‘different natures of the national operation (“Mare Nostrum”) and Frontex coordinated operation’ (“Triton”), which ‘could lead to confusion for the general public about Frontex responsibilities’ (Frontex, 2015c, p.5). The CF was concerned about the implications of replacing the Mare

Nostrum operation with Triton, which had a more limited mandate for search and rescue activities in the Mediterranean (Frontex, 2015c, p.37). The issues raised by the CF were echoed in the reports by the FRO, especially in relation to non-refoulement and clear guidelines to border guard teams regarding disembarkation (Frontex, 2013c).

A third point of disagreement was the proposal for an individual complaints mechanism which, as discussed in section 2.2.3, was also made by the European Ombudsman, the Council of Europe and the European Parliament. For the MB and Executive Director, it was a 'political demand that extends far beyond the mandate of the CF and beyond the mandate of Regulation 1168/2011 which did not grant Frontex powers to investigate violations of fundamental rights (Frontex, 2015c, p.5). The position of the CF and other institutions was eventually accepted, leading to the introduction of the individual complaints with Regulation 2016/1624. Yet, the reactions of the ED and MB in the 2015 report are reminiscent of their initial opposition to the establishment of the CF (Perkowski, 2018).

While subsequent CF annual reports do not suggest the same level of disagreement as the 2015 one, not following up recommendations is a pattern persisting to this date. There are numerous examples of recommendations that have never been adopted by the Frontex management, for example on the inclusion of specific fundamental rights objectives in operations plans, including those on return (Frontex, 2017n, 2019n; a) and on the revision of the rules on complaints. The response of the ED to the 2016 recommendation to suspend operations in Hungary (see also section 8) is probably the most consequential rejection of a recommendation. In October 2016, the FRO published a report raising numerous concerns over new Hungarian legislation, collective expulsions to Serbia, summary dismissals of asylum applications at the border, and incidents of violence (Frontex, 2016n). In parallel, reports by human rights organisations and NGOs also documented persistent violations of fundamental rights (AIDA, 2015; Amnesty International, 2015). The CF, following a request for information, also recommended suspension of operational activities, reiterating the concerns raised by the FRO<sup>9</sup> (Frontex, 2016n). Following an exchange of letters with the European Commission, the ED rejected the recommendation of the FRO and CF in February 2017, adopting the Commission's position that the presence of Frontex presence would help prevent fundamental rights violations (Frontex, 2016f, 2017j; European Commission, 2016). The recommendation was reiterated several times by the CF in the following years, raising concerns regarding persistent FR violations and ongoing infringement procedures by the EU Commission (Frontex, 2018f).

The incident appears to have had an impact on how the possibility to suspend operations is viewed by the CF. On the one hand, one interviewee observed that the fact that the mechanism for suspension has never been used suggests that there is 'there has never been a willingness to use it, at all' (Interview 4). On the other hand, another respondent argued that the CF recommended the suspension of operations in the past – as in the case of Hungary – but moved away from this position (Interview 3). While, for example, concern over pushbacks at the Greek-Turkish border were raised in the CF, there is no evidence to suggest they recommended withdrawal (see Section 7).

In essence, recommendations are only followed if the ED and the MB decide to act on them. Their decision appears to be shaped by a number of factors, such as perceptions over the

<sup>9</sup> However, the FRA, the Council of Europe and EASO abstained.

mandate of Frontex, but also on whether there is political will at the management level to follow a recommendation. The case of the suspension of operations in Hungary illustrates that in the end decisions are based on factors that surpass fundamental rights considerations, such as prioritizing border control. The lack of clarity in the legal framework is also a significant factor. There is no specific provisions in the legal framework that oblige the Agency to follow the recommendations made by the CF and the FRO, or that stipulate the process for considering and adopting recommendations. For a CF member, this raises questions on 'what really can be the impact of the forum not knowing what happens with the advice we provide and not actually being able to have any follow up on that' (Interview 5). The external evaluation of the CF also mentioned the reluctance of Frontex to proactively seek advice from the CF and to accept its recommendations (Frontex, 2019b).

## 6.2 Resources

One of the key constraints for the operation of the accountability mechanisms such as the office of the FRO and the CF is the level of resources allocated to them (Dawson, 2017; Gkliati and Rosenfeldt, 2018). Budgetary and staffing issues have been raised in CF reports and internal documents such as CF minutes since the establishment of the FRO's office (Frontex, 2015c; a):

Necessary staffing support to fulfil the existing tasks and responsibilities of the FRO, as regularly reported, require further consideration by the Frontex management in the near future. (Frontex, 2015a)

Internal documents also suggest that the work of the FRO's office was relying on temporary staff in internship positions (Frontex, 2013c, 2014c; f). The insufficiency of resources become more pronounced after 2015 and has been noted both by the CF and the FRO, as well as external actors (Baldaccini in Strik and Fotiadis (2020); Frontex (2018f); Frontex (2018k); Frontex (2017o)). The underpinning issue is the expansion of the Agency's mandate under regulation 2016/1624 regulation which engendered a need for more capacity to advise on and monitor fundamental rights issues (Frontex, 2018f). Further, the original mandate of the FRO's role did not include the examination of individual complaints, which later became their responsibility (Frontex, 2015c; European Ombudsman, 2013b). While strongly supportive of the introduction of an individual complaints mechanism, the CF warned that it was 'essential that adequate human and other resources be allocated' to the FRO (Frontex, 2018f, p.38, 2015fp.6).

However, the resources allocated to the FRO and CF were still not sufficient (Frontex, 2016b). CF reports and internal documents continued to refer to the staffing of the FRO's office, which in 2017 was so understaffed that a secondment of Swedish police officers to it was considered (Interview 4; Frontex, 2019a, 2017p; a). Both the CF and the FRO repeatedly raised concerns and asked for the increase of resources dedicated to the FRO's office (Frontex, 2017p; b; a, 2018c). The CF stated that 'Frontex maintained its reluctance to adequately capacitate the Fundamental Rights Office' (Frontex, 2017f, p.5), with none of the administrator positions provided for in the 2018 staffing plan of the Agency being allocated to the FRO office, and only three senior assistants joining the office in 2018. This reluctance, for CF, risked 'putting [the] FRO's credibility at stake' (Frontex, 2017b, p.5) and



is seriously undermining the fulfilment of the Fundamental Rights Officer's mandate and, more generally, Frontex's capacity to fulfil its fundamental rights obligations as derived from the EBCG Regulation (Frontex, 2018f)

Similar requests were placed for increasing support for the CF (Interview 4; Frontex, 2019b). A further constraint for the CF, whose members are employed by other organisations and meet three times a year is time (Giannetto, 2019). The 'limited' capacity of the CF constrains, for example, the extent to which they can carry out *in situ* visits:

We meet more or less three times a year [...] all the people sitting on the CF have many other things to do as well. We have a limited capacity – if we want to make a meaningful recommendation on the situation in Evros, we would have to be there, we would have to send a delegation to Evros (Interview 2).

Similarly, another respondent described visits as 'difficult' and 'time-consuming' (Interview 4). These time constraints, as the quotation above suggests, also affect the scope of recommendations that the CF can make.

### 6.3 Provision of Information to the Consultative Forum

The work of the CF is also affected by arrangements concerning the provision of information. As discussed in section 2.2.1, the legislative framework since 2016 and previously internal working arrangements stipulated that Frontex must make available to the CF information that is relevant to its work. The practical arrangements for making information available were, the outcome of negotiations between Frontex and the CF in the initial years of their operation. The first annual report of the CF indicates some limitations on the information made available to the CF, stating that 'It is clear [...] there cannot be full equivalence between the information received by the Fundamental Rights Officer and the Consultative Forum members' (Frontex, 2014a, p.11).

However, the transmission of information from Frontex to the CF seems to have remained an area of tension. All our CF interviewees identified Frontex practices in this area as problematic, although some suggested they have improved over time (Interviews 2, 3, 4, 5). One issue identified was that Frontex ultimately decides what information is relevant to the CF's work and hence what to make available (Interview 2). The legal framework and internal guidance are too vague and do not specify what constitutes relevant information (Frontex, 2014b). In practice, CF members suggested that they 'only get information when we ask for it' (Interview 2) and have to regularly submit requests to receive information ranging from operational plans, incident reports or statistics on Serious Incident Reports [SIRs] (Interview 2). Documents that have been made available through Freedom of Information applications support this claim<sup>10</sup>. The process can take a long time, partly because the consent of member states is also needed for certain types of documents and information (Interview 3; Frontex, 2018l). Further, a point raised by the CF was that their access to information was restricted in comparison to what released to the public via freedom of information requests (Frontex, 2019c). Another member commented that 'sometimes for freedom of information actions, people out of the forum may

<sup>10</sup> Examples of such requests are available here: <https://aleph.occrp.org/entities/37536636.c147b5ec25a709a5490db3dc2fa087f2ca80ee13>

get information we can't get' (Interview 4). Requesting documents is not a straightforward process, either, as CF members might not know the exact documents to request:

You also have to know which documents exactly you have to ask for and if you don't know which documents are there it makes it even harder (interview 5)

Documents released to the CF are often redacted (Interview 5), in the same manner as when released publicly or to individuals through freedom of information requests, which might affect the clarity of the information received (Interview 4). For another interviewee, the level of redaction also raised questions of trust, given that CF members are bound by confidentiality agreements (Interview 5). Further, information released following a CF request on Hungary was incomplete (Frontex, 2018f).

At the other extreme, another issue raised by CF interviewees was the volume of information in relation to the working arrangements of the CF, which one interviewee described as 'avalanches of information'. As CF members are unpaid, constrained in terms of time and have other work commitments, this rendered processing a high volume of information a laborious task (Interviews 4, 5; see also Giannetto, 2019).

The problematic transmission of information, for one interviewee, has an impact on the process of drafting recommendations, which is central to the work of the CF:

So we can make recommendations, but you never know whether you are 100% accurate, [...] we don't have the capacity fully to assess an entire operation. We do in local visits, which are also very difficult and time consuming, and we can provide advice on that, but we don't see reports on incidents when they occur, and when the incident occurs we try and react to that vast information about it but for the time we get something. If we get anything it takes its time and then it's always difficult because our experience up to now is that the press reports are very generic (Interview 4).

## **6.4 Reporting and Investigating Fundamental Rights Violations**

While accountability mechanisms within Frontex were strengthened in legislation considerably since Regulation 2011/1896, there are still many shortcomings in relation to their function, operation and consequently the implementation of the provisions of the legal framework and the Fundamental Rights Strategy. In this section, we explore some of the shortcomings that emerge in the process of implementing the provisions relating to fundamental rights and the functioning of the monitoring and accountability mechanisms.

### **6.4.1 Reporting and the use of mechanisms on ground**

Three mechanisms are crucial for monitoring and recording fundamental rights violations during operations: the Serious Incident Reporting system, the individual complaints mechanism and the forced return monitors. The fourth mechanism, the Fundamental Rights Monitors, has not been implemented yet. All three mechanisms present shortcomings in their effectiveness.

The Serious Incident Reporting system is widely believed to be underused, since few reports on fundamental rights violation are submitted in comparison to violations documented by

human rights bodies, NGOs and activists present on the ground (ECRE, 2018; Frontex, 2018l). The exact number of fundamental rights SIRs is difficult to establish. It appears that only three fundamental rights SIRs were submitted in 2018 (Frontex, 2019m; Council of the European Union, 2020b) while the minutes of the CF meeting in May 2017 suggest that no fundamental Rights SIRs had been received for more than a year (Frontex, 2017b; Interviews 2, 3). Yet, an annual report of the implementation of regulation 656/2014 stated that nine SIRs were received in 2017 (Council of the European Union, 2020a). In their majority, SIRs concern alleged violations by members of the national forces. We have found only one that clearly points to the involvement of deployed officers – SIR 445 on an incident involving a Finnish dog team<sup>11</sup> (Frontex, 2016l; Fotiadis, 2020). However, as our case study on Frontex operations at the Greek-Turkish border suggests (see section 7), there are indications of the involvement of Frontex deployed officers in pushbacks since 2017, as well as in another incident dating back to 2014. Similarly, Frontex deployed crews were reported to be involved in interception operations in the Aegean which resulted in fundamental rights violations, although the extent of their responsibility is unclear (Frontex, 2015g).

There are several explanations for the low numbers of SIRs. In the case of Hungary, where fundamental rights violations were extensively reported by human rights organisations and activists, the Deputy ED argued that it might have been due to the ‘reduced number of deployed officers’ (Frontex, 2017c). CF respondents suggested that deployed officers might not be aware of their ‘explicit obligation’ to submit SIRs, or when they should submit reports (Interviews 2, 5; also Frontex, 2019m), or, worse, ‘they don’t care’ (Interview 2). A lack of sanctions for failing to report fundamental rights violations might be an additional factor (Interview 4). Further, discussions in the 16<sup>th</sup> CF meeting suggest that JRO monitors, presumably those who are not Frontex staff, cannot submit SIRs.

More significantly, the FRO raised concerns regarding different perceptions of the fundamental rights implications of incidents among officers participating in JROs (Frontex, 2019h). One reason for this might be unclear internal guidance. An internal document which can be found online shows that fundamental rights violations can be reported under a Category 2 SIR – incidents that do not involve Frontex staff, officers or members of national forces – or under Category 4 – ‘situations of suspected violations of fundamental rights’ (Frontex, 2016c, p.3). Yet, incidents that involve violations of the principle of non-refoulement and use of violence by national forces have been reported under Category 2 SIRs (Frontex, 2018i, 2017m, 2016h; j; k). It is also likely that some incidents which could be interpreted as fundamental rights violations were not reported as such at least initially – for example an attempted suicide in the Vial hotspot facility in Chios, Greece and a pushback incident in the Aegean which both took place in 2016 (Frontex, 2016s; j; k). Deaths and attempted suicides are generally recorded as a category 1 SIR, which includes ‘situations of high political and/or operational relevance’.

In other cases, SIRs were not submitted by FX teams or monitors, but were raised by the FRO when she received information from human rights organisations (Frontex, 2016s). For instance, in 2016 the FRO was alerted by Amnesty International and ECRE that asylum seekers who had not exhausted legal remedies were included in return operations from Greece to Turkey. Similar cases were reported by the UNHCR in the same year, in return

<sup>11</sup> Although other SIRs might implicate deployed officers, they do not concern fundamental rights violations.

operations with the 'potential involvement of Frontex' (UNHCR, 2016b). Given that the Serious Incident Reporting system presupposes that Frontex staff do submit SIRs, the low numbers and the issues discussed above raise doubts regarding the effectiveness of the mechanism. These have been expressed both by the CF and the FRO, who have repeatedly asked for the reform of the Serious Incident Reporting system, most recently in 2018 (Frontex, 2019m).

The shortcomings of the mechanism were further illustrated by a case where a SIR was *not* submitted, despite serious fundamental rights violation having taken place. During a JRO from Munich, Germany, to Kabul, Afghanistan in August 2018, a team of observers of the *Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* [CPT] (Council of Europe, 2018a) recorded two incidents involving the use of unauthorised restraint techniques, a headlock that caused shortage of breath to the returnee and the application of pressure to his genitals (Council of Europe, 2018a; Nielsen and Fotiadis, 2019; ECRE, 2019). As this was a Frontex coordinated flight, the national guards involved were also bound by the Frontex Code of Conduct for JROs, which stipulates that breaches of fundamental rights must be reported (Frontex, 2018e). However, no SIR was submitted by the Frontex staff member monitoring the flight and the incident was not reported through the Serious Incident Reporting system, and is not mentioned in the FRO report corresponding to the period the incident occurred (Council of Europe, 2018a, par. 60; Nielsen and Fotiadis, 2019; ECRE, 2019; Frontex, 2018l)

Likewise, the implementation of the individual complaints mechanism presents serious shortcomings. Before the establishment of a formal mechanism, concerns were raised regarding the process of submitting complaints. For instance, in the case of complaints related to JROs, the CF annual report of 2013 stated that

concerning the already mentioned possibility for the returnee to lodge a complaint, the CoC JROs remains unclear as to when and how complaints can be made in practice, by whom and how they will be processed (Frontex, 2014a)

Since its establishment as a formal mechanism in 2016, the individual complaints mechanism has resulted in very few complaints being submitted – just 10 in 2018 (Frontex, 2019m), none of which concerned sea border operations (Council of the European Union, 2020a). Several shortcomings have been identified. Dissemination efforts have been weak, therefore it is still uncertain whether people whose rights might have been violated know about the mechanism and the process of submitting complaints (Frontex, 2018f; Frontex, 2019m; Frontex, 2017b; Interview 3). Questions have also been raised concerning the accessibility of the mechanism for children and vulnerable groups (Frontex, 2019a). Further, the use of the individual complaints mechanism has been hindered by the non-availability of information in operational areas, an observation which has been recorded in various locations including Hungary and Greece as well as during return operations (Frontex, 2016d, 2019j; h). In the case of the return operation mentioned above, the CPT observed that the process for providing information on complaints was

not to be clearly established in practice; for instance, it was initially not clear who could provide returnees with a copy of the official complaint form. The Federal Police informed the delegation that the form was provided only upon request and that it was only available in the English language' (Council of Europe, 2018a, par. 58)

A similar concern related to the process for officers to pass on information on the complaints procedure, specifically whether this should be done upon request from a potential complainant or proactively by officers in operations, while an FRO report of JROs noted the absence of complaints forms in operational areas (Frontex, 2017f, 2019m; h; Kohler cited in Correctiv, 2019). While the CF was in support of the latter option, this is still an area of unclear practice (Frontex, 2019m). However, the European Centre for Returns, an office within Frontex, had expressed the ‘fear’ that more information on complaints might lead to more complaints being submitted (Frontex, 2018b, p.4).

A further set of deficiencies relates to the protection of complainants. FRO reports suggest that victims of violations were reluctant to submit complaints (Frontex, 2014e; f, 2015f, 2016h; r). One reason identified was their interactions with national authorities as the perpetrators of the fundamental rights violations, and the absence of protections for the complainant (Frontex, 2016d). A FRO stated, for example, that potential complainants are fearful of the implications of being named in a complaint for their asylum applications (Kohler cited in Correctiv, 2019). In the case of an alleged pushback at the Greek-Turkish border, the presence of the national authorities in the debriefing interview rendered the victim of the pushback reluctant to submit a complaint (Frontex, 2018i). An earlier incident in Hungary, concerning the use of violence against a migrant, similarly involved the presence of a Hungarian border guard in the interview,; subsequently the victim did not wish to submit a complaint against the national authorities (Frontex, 2016r; h). While this is standard practice in terms of the operational mandate of Frontex, it can be detrimental for the individual whose fundamental rights have been violated, especially since complaints cannot be submitted anonymously (Frontex, 2016p; Correctiv, 2019).

In order to improve the individual complaints mechanism, the CF suggested better communication and dissemination of information on the individual complaints mechanism (Interviews 2, 4; Frontex, 2017f), including the better training of border guards (Frontex, 2016d). Some improvements were to make the complaints form and information on the complaints procedure available in several languages, the production of information posters and booklets, as well as the introduction of an online form (Frontex, 2017p, 2018k; l). Similarly, the FRO urged Frontex ‘to ensure availability of the complaint forms in hard copies as well as envelopes addressed to the FRO address in all operational areas (Frontex, 2017p, p.7). In addition, the FRO stated that providing protection to victims of fundamental rights violations throughout the process of investigation of complaints would encourage the lodging of complaints (Frontex, 2016d). However, as the report on the FRO visit to Evros illustrates, the deficiencies of the complaints mechanism seem persistent. A revision of the rules for complaints has been repeatedly requested by the CF (Frontex, 2019m, 2018f, 2017b).

The forced return monitoring system similarly presents several weaknesses. The incident during the deportation flight from Munich to Kabul in August 2018 raised concerns as to whether serious incidents are efficiently recorded during return operations by the assigned monitors. FRO reports suggest that there might have been no SIRs at all submitted on JROs between the 1<sup>st</sup> January 2017 and the 30<sup>th</sup> June 2019, although incidents were recorded by monitors (Frontex, 2017h, 2018g; h, 2019g; h). Yet, Fotiadis notes that two SIR were submitted in the context of 508 JROs during 2018 and the first half of 2019, which however concerned incidents of violence against escorts (Fotiadis in ‘Under surveillance’: Monitoring at the border, 2020). Just one complaint appears to have been submitted which concerned a

potential refoulement (Frontex, 2019h). Reports submitted by national monitors are not public (Fotiadis in 'Under surveillance': Monitoring at the border, 2020).

The FRO's reports nevertheless refer to a number of fundamental rights issues such as the lack of female escorts, returnees' right to privacy and property, insufficient information provided to returnees in advance of deportation, and the treatment of vulnerable groups (Frontex, 2019h; g, 2016d, 2018b, 2017h, 2018h). The 2018 and 2019 reports on returns, in particular, mention serious violations of fundamental rights during JROs, including the excessive use of constraints, use of unauthorised constraints, and an attempt to return an unaccompanied minor, which was in line with national law but against Frontex procedures (Frontex, 2019g; h).

Further, internal documents suggest several issues concerning the cooperation between Frontex and national authorities. For instance, implementation plans for the return flights are not always shared with monitors (Frontex, 2018g, 2019h, 2017h). Information concerning the monitoring of flights is not efficiently conveyed to Frontex and the FRO. Reports drafted by the national authorities, both before regulation 2016/1624, and since by outside the pool of forced return monitors, were not systematically transmitted to Frontex and received by the FRO (Frontex, 2018b, 2016b).

#### **6.4.2 Investigations of Complaints and Reported Incidents by National Authorities and Frontex Mechanisms**

The investigation of complaints and reported incidents is a crucial component of the accountability mechanisms of Frontex. Yet, it is equally beset by a range of shortcomings.

One underreported issue is that few complaints are deemed admissible by the FRO (Frontex, 2017b; p, 2016t, 2017o, 2018k, 2017o, 2019n). Only five out of fifteen complaints submitted in 2017 were declared admissible (Frontex, 2018k). In the reporting period of the FRO's XXII report (February 2018 to January 2019), three out of eight complaints were deemed admissible, while in the next reporting period (February to May 2019), one out of five. While the 2018 CF annual report refers to complaints *received* (Frontex, 2019m, p.23), the data provided in FRO reports, which are not public, suggest that the admissibility criteria in the legal framework and the rules for complaints (Frontex, 2016p) result in the exclusion of more than half of the complaints submitted. There is little information to explain why most complaints are not deemed admissible, other than that some concerned asylum or had no relevance to fundamental rights violations (Frontex, 2017b). Further, it is not clear what the reference to asylum entails, as there is no further detail in the minutes of the CF. Nevertheless, violations of the right to asylum is explicitly mentioned as a ground for submitting a fundamental rights SIR report (Frontex, 2016c).

If they concern personnel of the home countries, admissible complaints are then the responsibility of national authorities to investigate. In the first years of the period we investigate, FRO reports suggested persistent concerns regarding national mechanisms for investigating fundamental rights violations, with Greece and Bulgaria appear to have been the focus of concern because of a number of SIRs being received (Frontex, 2013b; c). According the Frontex internal documents, the FRO worked with the national authorities to strengthen investigation mechanisms and cooperation between the national authorities and Frontex (Frontex, 2014f). Further, in some cases, the national authorities investigating reported

incidents and individual complaints are not independent but are often internal units of the national agencies responsible for border control (Frontex, 2017b; a). In the case of Bulgaria, no official complaints mechanism and investigation process was in place (Frontex, 2017a). Further, a 2016 FRO report on SIRs noted that the investigating units might be local rather than central, which raises questions regarding their impartiality and objectivity (Frontex, 2016d; also Carrera and Stefan, 2018). The FRO suggested that such investigations should be conducted by central rather than local units and by fundamental rights experts within the relevant border control authorities (Frontex, 2016d). It is unclear if this recommendation has been followed by member states. In the case of Greece, investigation of violations at the Greek-Turkish border is still performed by units within local and regional police directorates (Hellenic Republic, Ministry of Citizen Protection, 2018; also section 7). Depending on the national context, other independent human rights organisations may have such responsibilities, but their role and procedures of investigation complaints may be unclear (Carrera and Stefan, 2018). As observed by the FRO, the 'negligence of such guarantees and safeguards can easily result in a violation of the right of an effective remedy and fair trial due to the lack of effective investigative process' (Frontex, 2016d, p.7, 2017a).

Moreover, several documents mention that national authorities have not always shared detailed information on the progress of investigations with FRO and Frontex. Responses by national authorities were frequently delayed (Frontex, 2015c, 2016t; q; r; a, 2017a, 2019e, 2018k), in some cases over a year (Frontex, 2017o; n). This appears to be a consistent issue with the Bulgarian and Greek authorities, despite the decision in the case of the latter to form joint Frontex and Greek teams to investigate and follow up reports of fundamental rights violations (Frontex, 2013b). The issues were persistent and widespread enough for the FRO to express the view in 2016 that they would affect the planned individual complaints mechanism (Frontex, 2016b). Further, the FRO noted discrepancies in the way different MS reported on follow up actions related to the investigation of incidents, which hampered the FROs work on detecting patterns of fundamental rights violations during operations (Frontex, 2016b). Reflecting the vagueness of the legal framework, follow up actions mentioned in internal documents consist of contacting the relevant national authorities for follow-up updates (Frontex, 2017o).

Further, there is no mechanism to address institutional and systemic failures of national authorities to investigate reports and complaints forwarded to them by Frontex. This, as Frontex claims, is beyond the mandate of the Agency (Interview 1). Yet, internal documents and external sources suggest a persistent pattern where national authorities either do not investigate fully, or the investigations result in no blame attributed to national border management actors. This is a frequent practice in Greece in relation to incidents of pushbacks and other violations at the Greek Turkish border, as well as in the Aegean. As we observe in section 7.5, all of the investigations of submitted SIRs since 2017 were closed without finding any offense committed by Greek police officers. The same holds true for cases before 2017 (Frontex, 2015d, 2016i; d). The Farmakonisi incident referred to in section 6.1 is another key example in terms of pushbacks at sea, but not the only one. During Operation Poseidon in 2016 and in the presence of a Frontex-deployed Romanian and Portuguese coast guard ships, the Hellenic coast guard transferred migrants that had been intercepted to a Turkish coastguard ship which consequently transferred them to Turkey, where they were detained (Frontex, 2016k; Alarm Phone, 2016). The Greek authorities, following requests of information by the ED, argued that the incident was a SAR operation and the handover to the Turkish

coastguard was in order to ensure the safety of migrants (Frontex, 2016s; k). Despite such incidents being reported constantly in the Aegean (AIDA, 2020a; Alarm Phone, 2019), there have been few investigations – the Farmakonisi incident being an exception – and no attribution of responsibility to officers for fundamental rights violations.

Similar problems relating to investigations emerge in other national contexts. Several incidents involving Bulgarian, Spanish and Hungarian authorities were closed with no responsibility attributed to the authorities (Frontex, 2016q; d). Cases closed by the Hungarian authorities without liability being attributed included serious violations such as beatings, theft of possessions and attacks by dogs handled by police personnel (Frontex, 2016r, 2017o, 2016h). In such cases, as well as regarding the pushback at the Greek-Turkish border that emerged during a debriefing interview in Evros, the Frontex debriefers noted that the information provided by the victims appeared credible and reliable.

An even more problematic aspect is the investigation of complaints against deployed Frontex officers, which falls under the responsibility of their national authorities rather than the host state (Frontex, 2015g). As Frontex has repeatedly stated, there have been no complaints against deployed personnel (Interview 1; Fotiadis, 2020; Kartali, 2019). Without submitted complaints and in particular SIRs, it is unlikely that investigations are initiated. Yet, as the case study on Evros illustrate, there have been at least indications that FX deployed personnel *may* have been involved in incidents resulting in fundamental rights violations. Further, there is no indication if a SIR was submitted in relation to a 2014 incident involving German speaking officers at the Greek-Turkish border, or an investigation took place, regardless of the fact that the victim did not wish to submit a complaint (Frontex, 2014f).

The shortcomings of investigations at the national level highlight the limitations of the accountability framework of Frontex. While some complaints are submitted, very few are deemed admissible. Admissible complaints and reported incidents are predominantly investigated by national authorities, since they concern national border guards. However, national systems of investigation present significant structural weaknesses and rarely uphold any complaints or conclude that there was a case to answer in a reported incident. In fact, we could not find any references to complaints that were upheld by national authorities or investigations that resulted in blame being attributed to any national actors. However, as the accountability mechanisms of Frontex are largely predicated on national mechanisms, the shortcomings of national mechanisms have significant impact on the extent that fundamental rights violations can be addressed.



## **7. Case Study: Pushbacks at the Greek-Turkish Border in Evros**

Since the RABIT deployment of 2010 (Carrera and Guild, 2010; Fink, 2018), the presence of Frontex teams in Evros, the area and prefecture adjoining the Greek-Turkish land border, has coincided with practices of border management by the Hellenic Police which have raised serious concerns regarding their compliance with international and human rights law (Frelick, 2008; Amnesty International, 2010; Pro Asyl, 2013). The intensification of pushbacks since 2017 along with the continuous, if limited, presence of Frontex teams, raises questions regarding the fundamental rights responsibilities of the Agency in the operational area of Evros. These concern the potential involvement of deployed officers in pushback incidents, accountability issues related to the monitoring and investigation of fundamental rights violations, and the continuing presence of Frontex, especially under the 2020 RABIT operation and in view of serious indications of persistent fundamental rights violations.

### **7.1 Pushbacks**

Since 2017 reports of pushbacks across the Greek-Turkish border have intensified, following a parallel increase of border crossings through the Greek-Turkish border. Yet they are not a new practice. Along with pushbacks at sea, they had attracted the attention of NGOs in the late 2000s (Frelick, 2008; Amnesty International, 2010; Pro Asyl, 2013) even before the first deployment of the Frontex RABIT force in the winter of 2010. Since the deployment, pushbacks possibly reduced in number, but as even Frontex documents suggest, they did not stop (Frontex, 2013a; b; c, 2015d, 2016i; d). Since 2017, however, several Greek NGOs and human rights organisations documented systematic patterns of pushbacks across the Greek-Turkish border (ARSIS, Greek Council for Refugees and HumanRights360, 2018; Greek Council for Refugees, 2018; Human Rights Watch, 2018). These patterns continued in 2019, with several more incidents being reported by NGOs, activists and media (Koculu, 2019; Mobile Info Team, 2019; Christides, Lüdke and Popp, 2019, 2020).

Following the ‘opening’ of the Turkish border by the Turkish government, its Greek counterpart responded to the increased presence of people on the Turkish side intending to cross the border with reinforced border controls and deterrence measures. Reports suggest that the Greek security bodies engaged in widespread pushback practices, the use of violence – including tear gas, blank bullets and live ammunition - and unlawful detention justified by reference to the ‘exceptional’ situation in Evros (Human Rights Watch, 2020; Stevis-Gridneff et al., 2020; ‘The Turkish authorities drove us to the border’, 2020). Two migrant deaths, documented and analysed by investigative media and researchers, are likely to have been the responsibility of Greek security forces (Amnesty International, 2020b; Forensic Architecture, 2020; Bellingcat, 2020; Lighthouse Reports, 2020). Allegations of human rights violations, excessive violence and pushbacks were formally dismissed by the Greek government as ‘fake news’ (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020; LIBE Committee meeting, 06 July 2020, 16:45 - 18:45, 2020). In March and April 2020, further pushbacks were reported, this time involving the transport of people from camps and detention facilities in mainland Greece (Border Violence Monitoring Network, 2020; Abdulrahim, 2020; Schmitz, Kalaitzi and Karakaş, 2020). Moreover, the government suspended the submission of asylum applications on March the 2<sup>nd</sup> for a month (Greek Government Gazette, 2020).

## 7.2 Operational activities

On 2 November 2010 the first ever RABIT operation was launched in Evros following a request by the Greek government (Carrera and Guild, 2010). 175 team officers, as well as vehicles and other assets, were deployed. The RABIT operation ended in March 2011, and operations in Evros were incorporated into Operation Poseidon Land, a part of Operation Poseidon Sea which was active in the Aegean, with reduced presence of personnel and assets. Since 2015, all operational activities in the Greek-Turkish border area take place under JO Flexible Operational Activities and JO Focal Points (Fink, 2018; Frontex, 2016o, 2017d, 2018d; Frontex Press Office, 2020). According to information we received from the Frontex press office, since 2017 between 15 and 30 officers are normally present in Evros. Technical equipment includes mainly thermovision vans and patrol cars (Frontex Press Office, 2020). Frontex refused to reveal any details about assets and the composition of the teams in terms of home countries through Freedom of information requests, citing security reasons. However, local police directors in 2018 referred to German, Austrian and Polish border control teams, and three thermovision vans (Interviews 7, 8). Further, we sighted German Bundespolizei vans stationed in Alexandroupoli and Orestiada, and a Dutch patrol car in Orestiada in the course of our fieldwork in the area (Images 1-4). During the events at the Greek-Turkish border in March 2020 and before the RABIT deployment, the German Bundespolizei patrols cars were sighted by journalists (Conversations 2, 3). A photo published in a Politico article (von der Burchard, 2020), later removed, showed a German police car, one of the two we observed in the area during fieldwork, next to apprehended migrants. Further, a source present in Evros in March 2020 told us that they saw two German police vans driving behind two white vans without number plates (Conversation 3). We saw such vans, used by the Hellenic Police and often linked to pushbacks, in Neo Cheimonio in Evros and the Poros detention centre in Evros (Karamanidou and Kasperek, 2020; Images 5, 6).

Following the decision of the Turkish government to open the borders on 27<sup>th</sup> February 2020, the Greek government reinforced border protection measures in order to prevent entry into Greek territory. On the 1<sup>st</sup> March, the Greek government requested assistance from Frontex, including a RABIT deployment at the Greek-Turkish border (To Vima, 2020). The Executive Director [ED] agreed to this request on the following day, and the Management Board [MB] agreed with his decision on March the 3<sup>rd</sup> (Frontex 2020 3<sup>rd</sup> march) An additional 100 border guards from 22 Member States, as well as technical equipment, were deployed at the Greek-Turkish border on the 13<sup>th</sup> March 2020 (Frontex, 2020d; c).



Image 1: German Federal Police van, Alexandroupoli, January 2019. Photo: LK





Image 2: German Federal Police van, Orestiada, August 2019. Photo: LK





Image 3: German Federal Police van, Orestiada, December 2019. Photo: LK





Image 4: Dutch Border Police car, Orestiada, December 2019. Photo: LK



Image 5: White unmarked van, Neo Cheimonio Border Guard Station, August 2019. Photo: LK



Image 6: White unmarked vans, Poros detention site, December 2019. Photo: LK



### 7.3 Frontex Responses to Pushbacks in Evros

While the issue of pushbacks was raised repeatedly in the Consultative Forum [CF] (Frontex, 2018b, 2019a) and Frontex management have been aware of the practice, the response of the Agency consisted largely of asking Greek authorities for information (Frontex, 2018b, 2019a). Greek authorities, however, appear not to have communicated such information, at least not promptly (Frontex, 2018b, 2019a). The Fundamental Rights Officer [FRO] visited the area in January 2019, suggesting that there might have been some serious concern regarding incidents in the area.

Pushback incidents have been recorded through the Agency's Serious Incident Reporting system. To our knowledge, only six Serious Incident Reports [SIRs] have been submitted since 2017, despite the extensive documentation of incidents in the area. Frontex informed us in an email communication that no SIRs were received since 2018, although we later found that in fact two have been submitted (Frontex Press Office, 2020; Frontex, 2019n; j; l; k). There is no information that any individual complaints have been submitted. The FRO report on their visit to the area reported that information on the complaint mechanism was not visible in operational areas such as police stations and containers where debriefing activities took place (Frontex, 2019j). All reported SIRs concern incidents involving Greek security forces. Frontex has consistently and repeatedly denied any involvement of officers deployed in Evros in conducting pushbacks, citing the lack of formal complaints against them (Interview 1; Kartali, 2019; Soguel, 2018).

One SIR (no 606) was based on a report by a Greek human rights body (Frontex, 2017l) and two others (no 676 and no 798) rely on Turkish media sources (Frontex, 2017m, 2018j). One appears to have been raised by the FRO (no 676) rather than Frontex officers, while it is unclear who has submitted the other two. The remainder three (no 788, no 10025 and no 10036) appear to have been submitted by Frontex personnel in the Evros area (Frontex, 2018i, 2019k; l); their details have been redacted in the released SIRs. SIR no 788 provides some interesting insights into the process of reporting fundamental rights violations. During a debriefing interview, a migrant alleged he was pushed back during a previous attempt to enter Greece. The interview took place in the presence of the national authorities, as stipulated by the operational plan, which however rendered the victim of the pushback reluctant to share information. This lack of procedural safeguards for the victim 'as well as [the] person submitting [the] SIR' was noted by the FRO (Frontex, 2019j). The report also noted the 'lack of clarity among LCC [Local Coordination Centre] representatives as regards the SIR procedure – role of debriefer while receiving information on alleged violation of fundamental rights' (Frontex, 2019j).

The low number of SIRs in comparison to the extensive reporting of pushbacks raises questions regarding the use of the mechanism by deployed officers, an issue more broadly identified in internal documents and CF reports (see section 6.4.1). A reason that the number of SIRs was low might be, as stated by the Frontex press office, that 'deployed officers do not work in the immediate area of the border, but they conduct checks on the main roads' (Frontex Press Office, 2020, underlined in the original; also Frontex, 2019b; Soguel, 2018). This is confirmed by the 2019 report by the FRO on their visit to Evros, which states that Frontex deployed personnel do not, as a rule, patrol in the immediate border area, or the 'frontline' as a CF interviewee described it. According to a member of a team deployed in Evros, the Hellenic Police directed Frontex teams to patrol areas of Evros outside the frontline zone (Frontex,



2019j). The implication of this assertion is that Frontex personnel cannot witness pushbacks, as they do not participate in joint surveillance activities at the immediate border area next to the river Evros.

Yet, the claim is challenged by a number of other sources. First, operational plans, which include patrols as a key activity of deployed FX teams, refer to the military zone near the borderline, where access is 'only allowed in the presence of a Hellenic Police officer and only when on specific duty (e.g. border surveillance)' (Frontex, 2015e, p.46, 2016o, 2017dp.159, 2018dp.66). Further, the Deputy ED in the 18<sup>th</sup> CF meeting seemed to contest the FRO's report, 'insisting' that 'we should not draw conclusions on the basis of something that one FX deployed officer told a staff member of the FRO' (Frontex, 2019a, p.6). Statements by the Hellenic authorities also appear to claim that Frontex personnel do patrol the frontline zone. A statement to that effect was made to the FRO during her visit in 2019 (Frontex, 2019j). Similarly, the response of the Greek Ministry for Public Order to the Council of Europe's 2018 report states that

'The said Officials, always under the supervision of Greek Police Officers, take part both in the prevention operations (entry prevention) and in the management of immigrants after their detection (procedures of nationality identification, information, interpretation, etc.)' (Hellenic Republic, Ministry of Citizen Protection, 2018, p.2)

'Entry prevention' in this context, suggests involvement in surveillance operations at the green border. This is also suggested by press releases of the Hellenic police (Hellenic Police, 2018a; b), and the former Head of the Orestiada police directorate, who referred to joint patrols of Greek and Frontex officers on national TV (ERT, 2020). Nevertheless, when asked by an MEP about the presence of Frontex personnel in the 'frontline' during a LIBE session in November 2019, the Greek Minister for Public Order M. Chrysochoidis did not provide an answer (Committee on Civil Liberties, Justice and Home Affairs Ordinary meeting, 06 November 2019, 10:00 - 12:29, 2019). We confirmed with the MEP who asked the question that no reply was received after the LIBE session. Since the start of RABIT operation in March 2020, Frontex deployed personnel appears to be operational in the frontline, not least because it was reported that they were shot at by Turkish border guards at the border near the village of Tycherio (Christides et al., 2020).

Regardless of the statements of Greek authorities, Frontex officers may have indeed been excluded from patrolling in the frontline at least for some periods during Frontex operations in the area. However, the differences in the accounts of Frontex and the Greek authorities suggest that the actual events are unclear and contested. It is also unclear, given what appears to have been agreed in the operational plans, who made this decision. The Deputy Executive Director stated in the 18<sup>th</sup> CF meeting that the Hellenic Police requested further assistance, but did not respond to questions by Frontex regarding where this assistance is needed (Frontex, 2019a). Other sources suggested two contradictory versions of events: on the one hand that Frontex submitted a request to the Greek authorities to participate in frontline operations, but this was not answered by the Hellenic Police, and on the other that they requested to withdraw from frontline activities<sup>12</sup>. The FRO, on her part, asked for Frontex personnel to be 'deployed and present in all FX operational areas in order to comprehensively support host authorities in border management related activities in full compliance with

<sup>12</sup> We cannot disclose the sources of this information.

fundamental rights, as set by article 34 of the EBCG regulation' (Frontex, 2019j, p.5). This approach reflects the often held view that the presence of Frontex brings transparency to fundamental rights practices by national authorities (Interview 3; European Commission, 2016).

## **7.4 Alleged Involvement of Frontex Officers in Pushbacks**

These operational uncertainties have implications for determining the accountability of Frontex teams on the ground, in particular as far as Frontex deployed personnel is concerned. Given the difficulty of obtaining visual, incontrovertible evidence on pushbacks in the region, as they are conducted within the military border zone where access is prohibited, it is difficult to challenge Frontex's assertion that deployed staff have never been involved in pushbacks. Yet, Frontex officers have been implicated through testimonies by migrants subjected to pushbacks (ARSIS, Greek Council for Refugees and HumanRights360, 2018; Mobile Info Team, 2019; Soguel, 2018) and during fieldwork we conducted in Evros (Karamanidou and Kasperek, 2018a).

Some testimonies referred to German-speaking officers participating in pushbacks:

The pushback was conducted by Greeks and Germans. In Turkey we were stopped by the mafia, who beat us too. I know that lots of people pay them money so as to leave unharmed. (ARSIS, Greek Council for Refugees and HumanRights360, 2018, p.4)

They had a black civilian car, wore civilian clothes, and had their faces covered. They beat us up with plastic batons, they spoke Greek, and some of them German. A while later a truck arrived, with an inflatable boat inside. (ARSIS, Greek Council for Refugees and HumanRights360, 2018, p.5)

When they came close, we could see they were well built and of a fair complexion. They didn't speak Greek, but a language that sounded like German. They were wearing dark uniforms; different from the ones the Greek police was (ARSIS, Greek Council for Refugees and HumanRights360, 2018, p.6)

Hearing them shouting and speaking, we understood that some of them were Greek, and some were speaking another language, possibly German. (ARSIS, Greek Council for Refugees and HumanRights360, 2018, p.7)

Similar testimonies of officers speaking languages other than Greek – possibly German – are given in a report by Mobile Info Team:

He refers to them as German commando's, "because we know what the Greeks look like. They did not look Greek". They were really tall, young and muscled and said "go, go!". There were some other persons with them, who tried many times to cross the river and they knew. They said to them that these are the German commando's. (Mobile Info Team, 2019, p.t9)

The respondent claims that he heard the "coast guards" speaking in German when their boat was stopped after crossing the river into Greece. (Mobile Info Team, 2019, p.t21)

An article by D. Soguel, published in December 2018, refers to German speaking officers being directly implicated in a pushback. More recently, a Human Rights Watch report based on interviews taken between the 7<sup>th</sup> and 9<sup>th</sup> of March 2020 similarly reported that

One person said he was stopped by four armed men and a woman in black<sup>13</sup> with the German flag on their sleeves and one man in black with the Swedish flag on his sleeve and that they handed him and others over to men in black with balaclavas. (Human Rights Watch, 2020)

Although it is not certain beyond doubt that the individuals in question were Frontex officers, we confirmed that the migrant who gave the testimony was consequently subjected to arbitrary detention and pushed back to Turkey (Conversation 1) and one of the dominant patterns in reports on pushbacks is the participation of masked men (ARSIS, Greek Council for Refugees and HumanRights360, 2018; Greek Council for Refugees, 2018; Mobile Info Team, 2019). Further, another testimony which implicates German and Italian officers in a pushback is cited in a BVMN report published in May 2020 (Border Violence Monitoring Network, 2020).

We also located one testimony that implicates German speaking officers which dates back to 2014. An FRO report cited a migrant subjected to a pushback who referred to

Five people arrived, wearing masks and speaking German and took away all their belongings. These people were speaking English with the policemen. (Frontex, 2014f)

Therefore, migrant testimonies raise doubts concerning the assertions of Frontex that deployed staff are not involved in pushback incidents. Yet, these incidents have not been reported through the Serious Incident Reporting system at least until the end of 2019, either by officers on the ground, the FCO, or, since they are based on publicly available material by the FRO. Hence, while the SIR system seems to produce at least some reports insofar the national authorities are concerned, often based on press reports, the same does not seem to be the case when Frontex deployed staff are implicated.

## **7.5 Investigation of Fundamental Rights Violations**

The national authority designated to investigate fundamental rights violations in Evros, including the alleged pushback incidents described in the SIRs, are the Hellenic Police (Interview 1). The investigations on all six cases reported through the Serious Incident Reporting mechanism were completed with no wrongdoing attributed. The Hellenic police cited either that there was no credible evidence or that the incidents never took place (Frontex Press Office, 2020). SIRs 10024 and 10036 are marked as 'closed' but contain no information regarding the final outcomes of the investigation. Similarly, outcomes of SIRS submitted before 2017 show that the Greek authorities either did not uphold the complaints or failed to follow up in a timely manner (Frontex, 2016d). Other investigations conducted by the Hellenic Police, not related to Frontex SIRs, also dismissed similar complaints (Council of Europe, 2019).

<sup>13</sup> German police officers deployed with Frontex normally wear dark blue uniforms.

Systemic shortcomings of investigations in Greece had been previously reported in internal Frontex documents and a CF report (Frontex, 2013c, 2015c). The FRO urged the Greek authorities to ensure, as ‘minimum and urgent measures’

a more independent national investigation of these types of allegation (i.e. other than the local law enforcement units), better collection of detailed information at source and enhanced follow-up of allegations in close coordination with Frontex (Frontex, 2013c)

The question of the independence of investigations remained an issue. More specifically, it appears that allegations of violations are investigated by internal police units, sometimes by the same local force accused of conducting the violation (Hellenic Republic, Ministry of Citizen Protection, 2018). The dismissal of the reported incidents is equally unsurprising and consistent with long standing issues of unaccountability of the Hellenic Police and its reluctance to investigate or admit responsibility of violence or human rights abuses against migrants (Christopoulos, 2014; Karamanidou, 2016). Further, the Greek government – and local actors such as the Police Directorate of Orestiada – repeatedly and publicly denied that pushbacks are conducted, although the FRO report indicates that police authorities in Evros blamed paramilitary groups (Hellenic Republic, Ministry of Citizen Protection, 2018; Mourenza, 2019; I Kathimerini, 2019; Interview 8). The report by the UN Committee on the Prevention of Torture recommended in 2019 that Greek authorities

Enhance efforts to ensure the criminal accountability of perpetrators of acts that put the lives and safety of migrants and asylum seekers at risk, and ensure that victims, witnesses and claimants are protected against ill-treatment or intimidation that may arise as a consequence of their complaints (UN Committee against Torture, 2019, p.4)

While human rights organisations and NGOs in Greece have assisted victims of pushbacks to pursue cases in Greek courts, progress has been slow: an investigation launched by the Greek Ombudsman in 2017 has not been concluded by July 2020, an investigation initiated by the prosecutor of Orestiada in north Evros in March 2019 was similarly pending, and several complaints submitted by the Greek Council for Refugees in 2019 were still in the stage of pre-trial examination in May 2020 (AIDA, 2020a). Some cases have been reportedly dismissed by prosecutors (Christides, Lüdke and Popp, 2020). While submissions to the courts are ongoing, the most likely outcome is an eventual recourse to the ECtHR.

A further significant, albeit under-reported, issue concerns testimonies implicating mainly German-speaking individuals in pushback incidents and other fundamental rights violations. To the best of our knowledge, there have been no SIR reports or individual complaints related to the testimonies referred to in the previous section, although some may have been submitted following the launch of the RABIT 2020 operation. We do not know if the case cited in an FRO report that implicated German speaking officers in a pushback incident has been investigated by Frontex mechanisms, including the FRO, and the host country (Frontex, 2014f). No SIR or information in other FRO reports were found. While the Hellenic Police has primary responsibility as the host country to investigate alleged incidents of fundamental rights violations, violations by deployed staff should also be investigated by their home country, which in the above incident could be Germany or Austria. Yet, as no SIRs appear to have been submitted by Frontex personnel or the FRO, the process stipulated by regulations 2016/1624 and 2019/1886 might not have been initiated at all.

## 7.6 The March 2020 RABIT Deployment

The March 2020 RABIT deployment raised further questions regarding the assessment of the fundamental rights situation at the Greek-Turkish border. Regulation 2019/1886 requires that the ED, in consultation with the FRO must assess all operations before their launch as to whether they could lead to fundamental rights violations. The situation at the Greek-Turkish border at the time was such that the possibility of fundamental rights violation was high. The FRO had already raised concerns in relation to border management practices in the area following its visit on January 2019, recommending the suspension of operations in Evros (Frontex, 2019j). Media and NGOs documented practices that suggested systematic violations of fundamental rights, such as the extensive use of pushbacks to Turkey, the use of violence by both Hellenic Police and armed groups of locals, and illegal practices of detention, as well as the use of unmarked vehicles without registration plates (Amnesty International, 2020a; 'The Turkish authorities drove us to the border', 2020; Human Rights Watch, 2020; Stevis-Gridneff et al., 2020). In addition, on the 2nd March 2020, the Greek government introduced an emergency law which suspended for a month the submission of asylum applications of 'individuals entering the country unlawfully' and stipulated their return, without prior registration, to the country of transit or origin (Greek Government Gazette, 2020). These provisions elevated pushbacks to official government policy, and, as it has been argued, were a direct violation of EU and international law as there is no provision to suspend the right to asylum (Amnesty International, 2020a; Monella, 2020). Thus, the Frontex deployment was at a severe risk of violating its own legal framework which stipulates that all activities of the EBCG must be in compliance with fundamental rights (Monella, 2020; 2019/1896, Art 1, Art 5, Art 80).

It is unclear whether fundamental rights issues were taken into account prior to the decision to launch a RABIT operation at the Greek-Turkish border. We can observe, however, that a very short time passed between the request for Frontex assistance by the Greek authorities on the 1<sup>st</sup> March 2020 and its formal approval by the Management Board, just two days later. It is debatable if such a short period of time allowed for the full examination of fundamental rights considerations related to the operational area of Evros. This is significant given not only the extensive reporting of fundamental rights violations in the area, but also the 2019 report by the FRO, which urged Frontex to 'consider suspension or termination of the activities in case violations of fundamental rights violations or international protection obligations are of a serious nature or likely to persist' (Frontex, 2019j, pp.5–6). It appears that Frontex considered fundamental rights issues beyond its responsibility, arguing that

Frontex is not in charge of asylum procedures. The European Commission is currently in discussions with Greece about this matter. We continue to refer all asylum requests to national authorities as required by law (Monella, 2020)

Further, in May 2020 the RABIT operation was extended to July 2020<sup>14</sup>. Despite the persistent reporting fundamental rights violations since March, including pushback incidents in which, as discussed in preceding sections, appear to implicate Frontex deployed personnel (Border Violence Monitoring Network, 2020; Human Rights Watch, 2020).

<sup>14</sup> <https://twitter.com/Frontex/status/1263386853912305665>

## **8. Case Study: Proposed Suspension of Operations in Hungary**

In October 2016, the Consultative Forum (CF) and the Fundamental Rights Officer (FRO) proposed that Frontex withdrew from operations in Hungary because of widespread and systematic human rights and EU asylum law violations taking place at its external borders. This recommendation was never adopted, although it has been reiterated several times since then. However, the recommendation and ensuing responses by the Frontex Executive Director (ED) are a valuable illustration of the tensions between border management and fundamental rights, and of how they impact on the function of the Frontex accountability mechanisms.

### **8.1 Fundamental rights violations at the Hungarian borders and the 2016 Recommendation to Withdraw**

The Hungarian government introduced a new asylum law with several provisions that were incompatible with the EU asylum acquis in 2015 (AIDA, 2015). The Commission initiated infringement procedures in December 2015 (European Commission, 2015). In addition, the Hungarian government constructed a fence at its border with Serbia, later extended to its border with Croatia, and created transit zones at border crossing points (AIDA, 2015; Gyollai and Korkut, 2019). In 2016, the Hungarian government introduced a new law which established an 8 km border zone and made the destruction of the fence a criminal offense (Gyollai and Korkut, 2019). Migrants crossing the border without authorisation and apprehended within this zone were 'escorted' to the transit zone and the Serbian side of the fence and had very limited access to fast track asylum procedures (Hungarian Helsinki Committee, 2016). Moreover, human rights organisations and NGOs documented the use of excessive violence at the Hungarian border, as well as practices of pushbacks (Amnesty International, 2015; Human Rights Watch, 2016; Médecins Sans Frontières, 2017; UNHCR, 2016a).

In October 2016, the FRO published a report raising numerous concerns over the new legislation, collective expulsions to Serbia, summary dismissals of asylum applications at the border, and incidents of violence (Frontex, 2016n). Her assessment also referred to reports by human rights organisations and NGOs which also recorded persistent violations of fundamental rights, the admission of the Hungarian police of excessive use of force, and four prosecutorial investigations against police officers (Frontex, 2016n; Fotiadis, 2020). The FRO advised Frontex to

revise its support in the operational areas where there are several and repeated allegations of disrespect to the obligations and the values enshrined in the EU Treaty and legislation, as well as in regional and international laws. Otherwise the Agency is at risk by omission in respecting, protecting and fulfilling the aforementioned Charter of Fundamental Rights' obligations (Frontex, 2016n, p.7)

The CF also recommended suspension of operational activities, reiterating the concerns raised by the FRO (Frontex Consultative Forum on Fundamental Rights, 2016). However, the two EU agencies – FRA and EASO - represented in the CF, as well as the Council of Europe, abstained from the vote on the proposal (Frontex Consultative Forum on Fundamental Rights, 2016).

The ED rejected the recommendations on 1<sup>st</sup> February 2017, one day before the first CF meeting after issuing their recommendation. Prior to issuing his decision, the ED requested the opinion of the European Commission, who argued that

Frontex should continue with its operations in Hungary. Due to their presence, guest officers and Frontex staff can actively contribute to the improvement of the situation, in particular related to any possible risk of a misuse of force against irregular migrants, as well as in providing an objective and reliable source of information on all the circumstances on the ground and possible future incidents. The deployment of Frontex shows solidarity and commitment of the European Union to further support Hungary in protecting our common Schengen borders also in the future (European Commission, 2016)

The Commission's reasoning is reflected in the ED's reply to the CF on February 1<sup>st</sup>, and his subsequent letter on March, where he aligned with the argument that the presence of Frontex's in Hungary would prevent human rights abuses (Frontex, 2016f; g). He further described reports of fundamental rights violations at the Hungarian border as 'not confirmed' (Frontex, 2016g, p.2), citing the low number of Serious Incident Reports [SIRs] submitted – three at the time - and that an investigation by the Hungarian authorities into an incident of mistreatment concluded that there was no violation of the law (Frontex, 2017i; j). Similarly, he referred to the findings of a Commission visit to Hungary in October 2016, which stated that 'when applying the new law on escorting migrants back to the border if found within 8 kilometres' zone, the Commission's mission did not find evidence of any such [violations] systematic practices' (Frontex, 2017j; Fotiadis, 2020). Further, he argued that none of the SIRs involved Frontex deployed staff, although in fact one of them concerned a Finnish dog team (Frontex, 2017j, 2016l; Fotiadis, 2020).

The CF, in response to the ED's February letter, raised concerns both on the situation in Hungary but also regarding the ED's reliance on the number of SIRs, questioning the effectiveness of the mechanism against well-documented fundamental rights violations by other organisations. They further objected to the ED's reference to the absence of SIRs in relation to 'operational activities' (Frontex, 2017j) rather than to the operational *area* of Frontex (Frontex, 2017a) which would suggest a greater degree of responsibility for fundamental rights violations and their monitoring. In March, the FRO published a further report on the situation at the Hungarian-Serbian border which, while noting the reduction of officers deployed, reiterated that '[t]he risk for shared responsibility of the Agency in the violation of fundamental rights in accordance to Article 34 of the European border and Coast Guard Regulation remains very high' (Frontex, 2017g). In its 2017 May meeting, the CF asked the ED to reconsider suspending activities in Hungary given the infringement procedures initiated by the EU Commission and the persistence of fundamental rights violations, regardless of the reduction of deployed staff and material resources in Hungary (Frontex, 2017f; b). Since May 2017, the CF has reiterated its recommendation several times, citing the escalation of the infringement procedure by the European Commission, and further reports of fundamental rights violations at the Hungarian border (Frontex, 2017c, 2018a, 2019b). In May 2019, the CF recommended that Frontex does not support return operations in Hungary because of the shortcomings of the Hungarian asylum and return systems, also noting the increase in deployed officers (Frontex, 2019b).

The responses to the recommendations on Hungary highlight several problematic dynamics. First, the low numbers of SIRs were used as evidence for not suspending operations (Frontex, 2017i; a). Thus, despite its shortcomings (see section 6.4.1), the system fed into the justification of significant decisions regarding fundamental rights. Secondly, the evidence of external organisations was disregarded, although it was sufficient to inform the infringement procedures initiated by the Commission (Baldaccini cited in Fotiadis, 2020). There is in fact no procedure for taking such information into account within the Frontex mechanisms. Third, it is evident that the balance of power in decision making lies with the Frontex management and the European Commission. In the Commission's answer, the imperative of border control, at the time in the context of movements along the Balkan route, was prioritised over fundamental rights concerns (European Commission, 2016; Fotiadis, 2020), and this position was adopted by the ED. The Commission's reply to the ED suggested that the responses of member states involved also had an influence on the decision not to suspend operations. A CF respondent similarly remarked that the recommendation to withdraw from Hungary engendered 'a deep conflict with the representative of Hungary at the Management Board, who was furious' (Interview 2).

Developments in Hungary since 2016 also cast doubt on the reasoning used by the Commission and Frontex. The Commission suggested that the presence of Frontex would contribute to the recording and monitoring of fundamental rights violations. However, very few SIRs and complaints appear to have been submitted (see section 6.4.1), possibly just one in 2017, which was raised by the FRO on the basis of NGO reports of violence rather than submitted by an officer on the ground (Frontex, 2016m) - despite the continuing documentation of fundamental rights violations by organisations external to Frontex (AIDA, 2020b; Border Violence Monitoring Network, 2019; UN News, 2019). The low number of SIRs – was attributed to the reduction of number of deployed officers (Frontex, 2017p). Equally, the Commission and Frontex adopted the view that Frontex presence on the ground would reduce the risk for fundamental rights violations, an argument which the continuing violations since 2017 cast this argument into doubt.

On the other hand, certain actions by Frontex suggest it took measures to avoid complicity to fundamental rights violations. While the recommendation to suspend operations in Hungary was rejected, Frontex reduced the number of officers deployed in Hungary to 33 by May 2017 (Frontex, 2017b) and to six by October of the same year (Frontex, 2017c).<sup>15</sup> This action was in response to the CF recommendation (Frontex, 2017c). Numbers of officers deployed in Hungary, however, increased to twelve by January 2019 (Frontex Press Office, 2019). Further, Frontex personnel did not participate in the escorting of migrant to the transit zone and to the Serbian side of the fence (Fotiadis, 2020; Frontex Press Office, 2019). Given that the escorting of migrants to Serbian territory would constitute a violation of provisions on non-refoulement, L. Gall, a human rights lawyer, argued that

the conspicuous absence of Frontex officers during the final stage of detention and pushbacks showed the agency was trying to disassociate itself from any legal violations or rights abuses during expulsions (Gall, cited in Fotiadis, 2020)

Similarly, an email in response to a FOI request stated that deployed staff do not operate in the '1<sup>st</sup> line', an area unclearly described in the email as 'a first few meters wide', presumably

<sup>15</sup> In another source, Frontex appears to have stated that Frontex deployed 17 dog teams in Hungary. It is unclear how many teams were present at the same time (Fotiadis, 2020).



from the Hungarian border (Frontex Press Office, 2019). Similarly to the case of operations in Evros, where Frontex alleged that deployed officers were not present at the ‘frontline’, it is not clear whether this was a decision of the national authorities or the Agency. The non-participation in escorting tasks has significant implications for fundamental rights monitoring. On the one hand, it enables Frontex to avoiding complicity in violations, but also limits the capacity of officers to prevent and report violations in the manner suggested in the letters of the Commission and the ED (European Commission, 2016; Frontex, 2016f; Fotiadis, 2020).

## 9. Strategies for Evading Accountability

While the previous sections addressed the legal framework relating to accountability mechanisms and the shortcomings of these existing mechanisms, in this section we discuss what we define as patterns in the responses of Frontex to criticisms related to fundamental rights. Based on the analysis of internal documents, an interview conducted with the Frontex press office and an analysis of statements in publicly available documents, we argue that Frontex uses five strategies in order to refute criticisms but also to evade responsibility regarding violations of fundamental rights within its operational areas.

### 9.1 Using Information Instrumentally

One way that Frontex refutes concerns and criticisms on their fundamental rights record is by using their internally produced information, both related to monitoring and accountability mechanisms but also to other operations, in an instrumental manner.

First, data produced by monitoring and accountability mechanisms has been used instrumentally to inform key decisions with significant impact of fundamental rights. The CF recommendation to withdraw from Hungary was rejected partly because of the low number of Serious Incident Reports [SIRs], a justification adopted both by the Frontex Executive Director [ED] and the EU Commission (Baldaccini cited in Fotiadis, 2020; Frontex, 2017j, p.2). At the same time, evidence of fundamental rights violations by external organisations was disregarded (Baldaccini cited in Fotiadis, 2020; 'Under surveillance': Monitoring at the border, 2020). Hence the failure of the mechanism – given the extensive reports of violations by other organisations - was used to justify decisions on operations, which were dictated by wider political imperatives (European Commission, 2016; Fotiadis, 2020). Documents also illustrate that Frontex relied on data produced by the national authorities: the absence of any decisions upholding complaints. Yet, reliance on national systems disregards their shortcomings, extensively documented in internal Frontex documents, and in the case of Hungary a political environment that displayed significant hostility to migration (Gyollai and Korkut, 2019). In a similar manner, Frontex has argued for example that 'no complaint has been filed against any Frontex officer' (The Japan Times, 2020; also Kartali, 2019; euractiv.com, 2019) in order to address criticisms towards its human rights record.

Conversely, the 2020 RABIT deployment in Evros illustrates how information produced by its monitoring mechanisms can be ignored if it does not serve political decisions. There are still, at the time of writing, many unanswered questions regarding the extent to which fundamental rights issues, whose existence is documented in various reports of the FRO and CF, were considered by Frontex prior to its launch. The decision to launch was taken within days: the formal request from Greece was made on March 1<sup>st</sup>, the formal decision by the Management Board [MB] and the ED was taken just two days later, on March 3<sup>rd</sup> (Frontex, 2020i; To Vima, 2020). On the same day, the leaders of EU institutions, including EU Commission president U. van der Leyen, EP President D. Sassoli and EU Council President C. Michel, visited Evros and publicly expressed their support for the actions of the Greek government and the Frontex deployment in the area (European Commission, 2020). In a press release on March the 2<sup>nd</sup>, Frontex already stated that their response was positive (To Vima, 2020; Frontex, 2020d). Given that the decision was taken in a matter of days, with the evident political support of EU

leadership, it is doubtful that knowledge about systemic fundamental rights violations recorded in the area over the previous two years were taken into account.

However, Frontex data on fundamental rights violations should not be seen as limited to what is produced through fundamental rights monitoring mechanisms. Technological means of surveillance – aircrafts, drones, vessel detection systems, thermovision cameras – that the Agency has at its disposal are capable of tracking movements on the ground and at sea, and hence could detect incidents such as pushbacks. To our knowledge, Frontex has not fully addressed this question and has remained largely silent on this aspect of their data gathering. In the case of widely reported pushbacks from Croatia to Bosnia-Herzegovina, the issue of complicity by passing to the Croatian authorities information gained through aerial surveillance or the failure to detect any pushback operations during aerial surveillance operations was noted by HRW (2019) and in a question submitted by an MEP (European Parliament, 2019). The reply provided did not address the MEP's question regarding 'the extent to which Frontex's MAS<sup>16</sup> and FASS<sup>17</sup> services have assisted with, or set in train, illegal deportations from Croatia to Bosnia-Herzegovina' (European Parliament, 2020b).

Responses to events at the land and maritime Greek-Turkish border by MEPs also highlight the significance of this issue. In May 2020, a group of MEPs asked the Commission if Frontex was present near the location of a deadly shooting at the Greek-Turkish border on 04 March 2020, and if they had information from their aerial surveillance of the area (Strik, 2020). A joint investigation by Der Spiegel, Lighthouse Reports, Bellingcat, Forensic Architecture, Pointer and Sky News in 2020 had pointed to the likely responsibility of the Hellenic authorities, something which they denied. The reply by U. von der Leyen in July 2020 stated that no SIRs were submitted on the incident but did not address the issue of other sources of information<sup>18</sup>. Similarly, a group of MEPs asked Frontex to account for its knowledge of pushbacks in the Aegean during the spring and early summer 2020, specifically inquiring whether the Agency's 'situational awareness' and 'surveillance of the pre-frontier area' enabled them to 'witness any incidents' or to have knowledge that could help 'clarify the situation' (@SyrizaEPInternational, 2020). Several incidents of pushbacks at the Aegean Sea were reported by NGOs and media (Alarm Phone, 2020b; a; astraparis.gr, 2020; Schmitz, Kalaitzi and Karakaş, 2020; Keady-Tabbal and Mann, 2020; Abdulrahim, 2020). Frontex vessels were in all likelihood very close to the locations where pushback incidents occurred, which raised questions regarding what knowledge the agency had of these events (dm-aegean, 2020; Christides and Lüdke, 2020). Further, a German MEP, Dietmar Köster, stated in a Facebook post that ED F. Leggeri admitted he knew about these incidents and had informed the Greek authorities (Köster, 2020). While it could be argued that the above examples related to a specific practice in a given operational area, they apply more widely to the use of technologies that produce knowledge and data about events that result in fundamental rights violations.

Frontex repeatedly describes itself as an 'intelligence-driven agency', i.e. that any operational activities are planned and based on available data and risk analysis. With the formal incorporation of the European Border Surveillance System (EUROSUR) into the agency through regulation 2019/1896, the agency is in a unique position in that it might well have the best, near real-time overview over activities at the European Union's border. In addition, since

<sup>16</sup> Maritime Aerial Surveillance

<sup>17</sup> Framework Contract for Aerial Surveillance

<sup>18</sup> [https://twitter.com/Tineke\\_Strik/status/1281239413704593408](https://twitter.com/Tineke_Strik/status/1281239413704593408)

regulation 2016/1624, the agency is tasked with carrying out vulnerability assessments of members states portions of the European Union's border, affording the agency a direct window into the daily management of the borders. Frequently invoking an absence of information or even knowledge either points to an instrumental use of information, or that the data gathering and risk analysis practices of the agency do not produce reliable knowledge.

## 9.2 Invoking Presence and Absence

While the shortcomings of the monitoring and investigative mechanisms are reiterated by research, NGOs, media and human rights institutions as well as by its own internal bodies, the presence of Frontex on the ground is constructed as guaranteeing fundamental rights compliance and allow the monitoring and reporting of fundamental rights violations on the ground.

The argument articulated by Frontex, the EU Commission, but also by the FRO and the CF (European Commission, 2016; Oel in 'Under surveillance': Monitoring at the border, 2020; Frontex, 2019j; Frontex, 2016f; g; Interview 3), posits that the presence of Frontex at a border area acts as a deterrent for human rights violations. This argument was used to justify the non-suspension of operations in Hungary (Frontex, 2017j) and, despite infringement procedures by the Commission and continuing reports of human rights violations at the Hungarian border, it was still articulated by the Frontex press office in 2020:

we would highlight that the presence of officers deployed by Frontex and its staff can actively contribute to minimise any possible risk of a misuse of force, as well as to provide an objective and reliable source of information on all the circumstances on the ground (Frontex Press Office cited in Fotiadis, 2020)

In theory, the presence of Frontex is believed to prevent human rights violations because of existing monitoring and accountability mechanisms, which allow for both the recording and monitoring of incidents on the ground, but also because they affect the practices of national authorities (European Commission, 2016; Interview 3). Unsurprisingly, the validity of this argument has been challenged by human rights bodies. In its report on Hungary, the Committee for the Prevention of Torture of the Council of Europe noted that

the deployment of foreign police officers provided by the European Border and Coast Guard Agency (Frontex) cannot be regarded as a safeguard against ill-treatment, given their participation in a limited number of patrols and their absence on the "front line" close to the border fence (Council of Europe, 2018b, p.14)

Similar observations were also made by C. Woollard of ECRE, one of the organisations in the Consultative Forum (CF), on both the situation in Hungary and Greece. '[T]he presence of Frontex does not appear to be reducing violations', and equally does

not appear to have contributed in any significant way to the provision of justice to those whose rights have been violated (for instance in terms of documentation of incidents, deployments to points where risks are highest, contribution to tracing and supporting victims, public or behind the scenes pressure on governments to reduce risk of violations). Of course there may be activities that are not publicised and information that is shared, for instance with the Commission, it is consideration of

infringement. None the less, it is not obvious the FX's presence is limiting either violations or impunity for violations (Strik and Fotiadis, 2020)

Yet, the presence of Frontex is also used as a legitimization device by member states. The Hellenic police, for instance, invoked the presence of Frontex to refute CPT's findings on pushbacks and ill-treatment:

[...] within the framework of Frontex operations, a great number of officials have become active in Evros area, originating from several Member States of the Organization, without any incident of illegal retransmissions or violation of human rights by police officers of our border agencies having been ever recorded (Hellenic Republic, Ministry of Citizen Protection, 2018, p.2)

The Hungarian government employed the same strategy, arguing that Frontex officers were present during patrolling with their Hungarian counterparts, and therefore would have been able to observe violations of fundamental rights:

Regarding the alleged abuses in point 18 of the Report, which were not observed by the German and other nationality border guards performing their duties there, the European Border and Coast Guard Agency (Frontex) emphasized that the joint operations could not be suspended on unjustified claims of unjustified use of force. In addition, allegations of violations of human rights of migrants have not been confirmed, so these cannot be considered as sufficient grounds (Council of Europe, 2018c, p.4)

Further, the argument around presence is undermined by another claim put forward by Frontex itself. In a rather contradictory manner, the Agency has also argued that deployed officers *are not present* in locations where systematic violations of fundamental rights occur – for example at the Greek-Turkish and Hungarian-Serbian border frontlines (see sections 7.3 and 8.1). Our analysis of the Evros case study suggests that this claim should not be taken at face value: there are many indications that, at least on some occasions, Frontex may have been present at the frontline, and that their presence or absence might change over time. Information as to why Frontex is absent at the frontline is also contradictory. While the reason might be operational decisions taken by the Greek border management authorities, there was a suggestion that Frontex itself might have decided not to be present.

The same argument has been used in the context of operations in Hungary, whereby Frontex has denied involvement in the escorting of apprehended migrants to the Serbian side of the fence, while they appear to have been involved in detection and apprehension tasks (Frontex Press Office, 2019; Fotiadis, 2020). Contrary to the case of the Evros frontline, where it appears likely that the Greek authorities block the presence of Frontex personnel, in the Hungarian context there are no indications that such a decision was taken by the national authorities. On the contrary, the absence of officers from the last stage of border control operations, the escorting to the fence, appears to have been the decision of the agency (Frontex, 2017e; Fotiadis, 2020). In response to a CF query regarding pushbacks in at the Croatian-Bosnian border, the Frontex Deputy Executive Director replied that the Agency was only involved in aerial surveillance, as the national authorities objected to Frontex deployment on the ground (Frontex, 2019a). The reply given to a parliamentary question on the same issue similarly argued that Frontex was not present on the ground and therefore had no 'direct

information about incidents of alleged unprocessed returns except for the ones covered in the media and reported by NGOs (European Parliament, 2020b).

While the presence of Frontex in areas or tasks where systematic violations of fundamental rights have been documented creates risks of complicity, the argument of ‘absence’ put forward by the Agency serves at reducing this risk. Not being present at the ‘frontline’ – as illustrated in the contexts of the Greek and Hungarian borders – enables Frontex to distance itself from potential accusations of complicity (Lydia Gall cited in Fotiadis, 2020; also Correctiv, 2019). In the case of operations in Croatia, while the absence from the ground was invoked in this case to explain lack of knowledge on pushbacks, the increasing use of aerial surveillance also appears as a strategy to reduce the risk of complicity in fundamental rights violations (Correctiv, 2019). Nevertheless, there are inherent contradictions in the two narratives identified in this section; in a sense, they claim that Frontex is both present and simultaneously absent from key operational activities that are linked to fundamental rights violations. Certainly, the putative absence of Frontex from areas with high violations of fundamental rights clashes with one of the fundamental tasks of the agency, i.e. ensuring the introduction of professional border management practices at the entirety of the European Union’s external border.

### **9.3 Monitoring and Accountability Mechanisms as a Fig Leaf**

A strategy frequently used by Frontex, as well as Commission representatives, consists of invoking the existence of monitoring and accountability mechanisms to legitimate their border management activities and refute criticisms on its fundamental rights practices. This is a consistent pattern in Frontex public statements to the media as well as to European institutions. In August 2019, Frontex responded to a critical joint investigation by TV magazine Report München by national TV broadcaster ARD, newspaper The Guardian and investigative group Correctiv by issuing a press release stating that

Fundamental rights are at the core of all the agency’s activities. They are integrated into the Frontex Codes of Conduct, the Common Core Curricula for border guards, specialised training for border surveillance officers or officers conducting forced return operations. The Code of Conduct obliges every officer who has a reason to believe fundamental rights of any person were violated, either by witnessing such violation directly, or by hearing about it, to report this immediately to Frontex in form of a Serious Incident Report. [...] All those measures – specific guidelines for officers, training, monitoring by independent experts, the Fundamental Rights Office and Consultative Forum (an independent advisory body on fundamental rights comprised of European and international organisations and NGOs) are intended to make sure the appropriate checks and balances are in place. Another such measure is the complaints mechanism which allows anyone who believes their rights have been violated by a Frontex deployed officer to lodge a complaint. (Frontex, 2019f)

The press release did not explicitly mention the investigation which had been published the following day, but can be construed as an indirect response to it. A similar response was provided by the press office in a media article on a similar investigation by A. Fotiadis on Frontex activities on the Balkan route, stating:

All officers deployed by Frontex are bound by a strict code of conduct and are compelled to respect fundamental rights. On the first day in the operational area, the

officers receive an operational briefing that includes specific guidance on the respect of fundamental rights, referral procedures, complaint mechanism and the Schengen Border Code (Fotiadis, 2020)

Similarly, M. Oel, Director for Migration, Mobility and Innovation at the European Commission, when asked in a webinar organised by the Green Party at the European Parliament on how the presence of FX in Evros contributed to greater FR compliance referenced fundamental rights provisions and mechanisms, responded in the following manner:

All persons deployed under a Frontex operation have to respect a code of conduct providing for fundamental rights safeguards. A suspicion of violation of these fundamental rights must be reported to Frontex via the Serious Incident Report procedure. The Executive Director may also terminate any activity of the agency if the conditions to fulfil these activities are not longer fulfilled; this includes violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist. Irrespective of the presence of Frontex at a section of the external EU border the border guards of member states have to act in conformity with the Schengen Border Code which contains fundamental rights safeguards. In case of breach of these safeguards, member states have to provide access to effective remedies in line with the EU Charter of Fundamental rights and ensure that all allegations should be subject to credible investigations as proscribed in national law of the member states concerned regarding complaints against the conduct of law enforcement officers, including the alleged excessive use of coercive measures (Oel cited in Strik and Fotiadis, 2020)

It is also clear that this strategy is not only addressed at the media. In a meeting of of the LIBE committee, Frontex ED F. Leggeri stated that:

All the fundamental rights safeguards which are enshrined in all our operational plans and in particular operational plan Poseidon and operational plan Land Borders they are of course activated and valid so also apply to the rapid intervention. So the legal framework has not changed, we have all our commitments regarding fundamental rights in place. We have the standard practice of escalating the Fundamental rights incidents to the headquarters of the Agency, to the international cooperation centre which has the command and control authority at particular level in Greece and we also have in the loop our Fundamental Rights Officer and fundamental rights office (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020)

A common thread in the quotations above is that they refer to – and even list – the monitoring and accountability mechanisms in place as well as other instruments such as the Codes of Conduct which contribute to the governance of fundamental rights within Frontex activities. Yet, by referring to their presence rather than their function and implementation, actors deflect attention from the many deficiencies of the legal and policy framework and the operation of the monitoring and accountability mechanisms. The shortcomings we identified in the previous sections – omissions in the legal framework, absence of independent institutions, the under-utilised Serious Incident Reporting and complaints mechanisms, overreliance in weak national investigative systems – do not amount to an *effective* monitoring and accountability regime. Rather, reflecting the political significance of fundamental rights for Frontex and more broadly EU border management, the existence of monitoring and accountability mechanisms appears

as a fig leaf. On the one hand, it serves at hiding the deficiencies of existing arrangements which do not safeguard fundamental rights; on the other, they enable Frontex to hide behind a notion of 'commitment' – as expressed by F. Leggeri in the quotation above – to fundamental rights, despite involvement in practices that render Frontex complicit in, if not directly responsible for to fundamental rights violations.

## **9.4 Deflecting Responsibility to National Authorities**

Moreover, Frontex has adopted a strategy of deflecting attention to national authorities, arguing that it has no powers over their actions. When we asked for an assessment on the Frontex accountability mechanisms, the Frontex press officer repeatedly stressed that the Agency has no influence over them:

[...] our mandate does not cover the national authorities  
[...] we do not have any power over national authorities  
[...] we do not have any mandate or any power over the national authorities  
(Interview 1).

Similarly, when asked about allegations of pushbacks at the Albanian border, the Frontex press officer stated 'that Frontex is not in power over the behaviour of the national border guards' (Border Violence Monitoring Network, 2019). These statements suggest that, much like before Regulation 2016/1624, Frontex still designates national authorities as primarily responsible for actions that violate fundamental rights and for their investigation. However, the reforms of its mandate created a stronger operational role which goes beyond assisting national authorities, while also allocating a greater responsibility for promoting, preventing, monitoring and addressing fundamental rights violations. Yet, the above mention statements by the Frontex press office suggest that Frontex attributes primary responsibility to national actors, while avoiding any reference to any possible actions – such as suspending or not launching operations – on its part.

Frontex has equally stressed that it has no responsibility over investigating reports of fundamental rights violations, commenting, in relation to SIRs on incidents at the Hungarian border, that

under the European Border and Coast Guard Regulation of 2016, Frontex was not provided power to investigate. National authorities are to follow up on charges in SIR reports (cited in Fotiadis, 2020)

A reply to a question in the European parliament regarding pushbacks at the Croatian border similarly notes that

The EU legislator in the European Border and coast Guard Regulation has not entrusted Frontex – including its Fundamental Rights Officer and Consultative forum – with investigative powers for matters such as the one you have raised. Frontex has no general control, nor mandate to investigate, nor disciplinary powers, over member states border guard authorities (European Parliament, 2020b)

While the accountability regime as stipulated by the legal framework is indeed largely reliant on national authorities insofar violations are committed by national authorities, the above statement could be contested. It could be argued that the agency bears some responsibility



through the obligation of deployed officers to raise SIRs, not only when directly witnessing violations, but also on the basis on media accounts. Frontex also has investigating powers over violations committed by its own staff (see section 4.1.3). Further, while the FRO does not have any investigative powers into fundamental rights, they were given powers to investigate compliance with fundamental rights by Regulation 2019/1886. Admittedly, these are both very vague (see section 5.1) and could be disputed on the grounds of contested responsibility between Frontex and member states. However, for precisely the same reasons, they could be utilised to investigate serious and persistent violations by national authorities. Moreover, the extent of the shortcomings of national authorities – in particular the Greek ones – are known to Frontex, something repeatedly evidenced in internal documents (see sections 6.4.2 and 7.5).

Yet, invoking the responsibility of national actors does not necessarily imply an overtly critical attitude towards them. On the contrary, the attitude of Frontex can be rather diplomatic. An example is provided a reply given by ED F. Leggeri in the LIBE meeting of the 2<sup>nd</sup> April 2020, in response to an incident that occurred in the context of Operation Poseidon in Greece, whereby a Danish vessel refused to follow an order from by the Greek authorities which would have resulted in refoulement (Tritschler, 2020):

There was a question about an incident involving a Danish vessel that was given instruction by the Greek authorities that were not in line with the practice of non-refoulement and this was explained to the local authorities and since this incident to the best of my knowledge there were no more incidents repeated like this. This was apparently a misunderstanding. (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020)

By characterising the incident as a ‘misunderstanding’ Leggeri underplayed the significance of the decision of Greek authorities, which could have amounted to refoulement, as well as avoid direct condemnation of an action that amounted to a violation of refugee law. In another LIBE meeting on the 6<sup>th</sup> July, F. Leggeri reiterated that the incident was a ‘misunderstanding’ and further stated that

Those instruction were not in line with the operational plan and this was immediately recognised and acknowledged by the Hellenic Coast Guard [...] it was acknowledged there was a misunderstanding and wrong instructions given and this stopped, let’s say wrong instructions given in the context of a Frontex operation (LIBE Committee meeting, 06 July 2020, 16:45 - 18:45, 2020)

The repeated characterization of the incident as a ‘misunderstanding’ underplays the fact that the instruction given by the Hellenic Coastguard was a clear violation of international and EU law. Further, the actions of the Hellenic Coastguard breached the provisions of Regulation 2019/1896 which stipulate that operational plans are binding (Art. 36 par. 2). In case of instructions that ‘are not in compliance with the operational plans’, the ED ‘may, if appropriate’ (Art. 43 par. 3) consider withdrawing the financing, suspending or terminating the operation (Art. 46, par. 3). It is unlikely that any of these actions were considered.

In a similar manner, Leggeri praised the ‘very strong decisions’ of the Greek authorities that ensured that ‘there was no vulnerability’ at the Greek-Turkish border (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020). He further stated that

We made it clear We wanted to keep order at the external border and not allow violent attempts to cross it. Therefore the rule of law was also upheld. (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020)

The use of pronoun 'we' in this instance suggests joint action with the Greek authorities against what is described 'violent' attempts to cross. This characterisation also adopted by the Greek Minister for Public Order, M. Chrysochoidis, who earlier in the same meeting stated that

we successfully managed to prevent the significant numbers of migrants that have been gathering in large groups at the border line of the Evros river. Although they tried to cause damage to the fence on a daily basis as well as to cause injuries to our border forces by throwing stones or smoke grenades, firebombs and tear gasses at them. We stayed decisive calm and determined to protect our and EU's external borders. (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020)

Hence, inadvertently or not, Leggeri's statement legitimated the actions performed and narratives adopted by the Greek authorities which constructed the events in Evros as a violent attack against the country's borders and security forces. Leggeri's claim that 'the rule of law was upheld' also illustrates the prioritisation of border control over fundamental rights, also echoing another statement by Chrysochoidis, that

[a]lthough we were brutally attacked, our forces acted professionally in full respect of human rights, national European and international law (LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00, 2020)

Violations of fundamental rights, including the suspension of the right to asylum, and violence at the time were widespread and widely documented (Amnesty International, 2020a; b; Human Rights Watch, 2020). In this context, the statement of Leggeri showed the extent to which Frontex refused to consider issues of fundamental rights at the Greek-Turkish border. More significantly his statement reflects that while fundamental rights were incorporated in the definition of border management in Regulation 2019/1886, in practice they can be excluded from perceptions about what constitutes 'legality' or the 'rule of law' at the external borders.

## **9.5 Controlling Information and Implications for Accountability**

Another dimension in the Agency's problematic relation with fundamental rights accountability is illustrated by attempts to control the availability of information, both internally and publicly. We have discussed the less than ideal practices of information sharing with the CF in section 6.3, which suggest a level of mistrust towards its own advisory body. There are some indications that Frontex has been reluctant to share information with the body it is accountable to, the European Parliament. We have observed that at the time of finalizing this report (July 2020), most questions submitted by MEPs since October 2019 have not been answered by the Agency, or at least the replies were not available in the website of the European Parliament. MEP Clare Daly called a Frontex reply to a question regarding the use of Israeli-manufactured drones tested on Palestinian protestors 'blatantly short on truth' and further remarked on Frontex's interaction with the LIBE Committee:

I have to say unless they [Frontex] start changing their attitude in terms of being accountable to this committee and being more transparent in their operation then it is nothing more than window-dressing [...] I think there's a long way to go if we talk

about Frontex being transparent (LIBE Committee meeting, 04 June 2020, 16:45 - 18:45, 2020)

Equally problematic dynamics can be observed in what concerns the availability of information to the wider public. Internal documents are not publicly available and can only be obtained through freedom of information requests under Regulation 1049/2001. Nevertheless, Frontex has frequently refused to release documents of the grounds of security (Semsrott and Izuzquiza, 2018). To date, there has been only one legal challenge to the refusal of Frontex to release documents under FOIs, brought to the CJEU by transparency activists Luiza Izuzquiza and Arne Semsrott. After the court ruled in favour of Frontex, the agency presented the activists with a legal bill of €23,700.81 (Domínguez, 2020). This move was perceived as an attempt to discourage such actions by civil society organisations in the future (Domínguez, 2020; Fotiadis in 'Under surveillance': Monitoring at the border, 2020).

Further, since the beginning of 2020, Frontex has tried to limit the scope of FOIs and the public availability of such documents by introducing its own online form for submitting FOI requests. The main effect of this change is that internal documents will not be available publicly but only to the individual making the request. In another restrictive move last year, letters to individuals making FOI requests include a warning that sharing released documents with 'third parties in this or another form without prior authorisation of Frontex is prohibited' (Frontex PAD office, 2019). Yet it is unclear what the consequences of such sharing could be. Freedom of information activities are 'independent of Commission's monitoring' (M. Oel, cited in Strik and Fotiadis, 2020), although they are subject to the scrutiny of the European Ombudsman.

Investigations critical to the mechanisms and practices of Frontex in the field of human rights (e.g. Correctiv, 2019; Fotiadis, 2020, 2016; Howden, Fotiadis and Campbell, 2020; Nielsen and Fotiadis, 2019) largely relied on documents released through FOIs, which would not have been otherwise available to journalists and researchers. More importantly, these documents are instrumental in revealing discrepancies between information released by Frontex in an official capacity and internal knowledge. The documents obtained by Howden, Fotiadis and Campbell (2020), for example, highlighted the fact that Frontex had direct communication with MRCC Libya on SAR since early 2019, something also confirmed by CF minutes (Frontex, 2019a). Yet, a reply to a parliamentary question denied that there was such communication (European Parliament, 2020a).

Similarly, while we were informed by Frontex that no SIRs were submitted regarding operations in Evros since 2018, we discovered through an FRO report we obtained by a FOI request that in fact two SIRs were submitted in 2019. While Frontex and other actors have stated that 'no complaint has been filed against any Frontex officer' (euractiv.com, 2019), at least two incidents that involve deployed staff are recorded in internal documents: one at the Greek-Turkish border referred to in an 2014 FRO report and one in Hungary recorded by a SIR (also noted in Fotiadis, 2020). It would have been equally impossible to fully capture the discussions within Frontex bodies on pushbacks at the Greek-Turkish borders the contradictions around the 'frontline' presence of Frontex or on the suspension of operations in Hungary without access to internal documents. In short, the scrutiny of the practices of Frontex related to fundamental rights is possible mainly because of such documents being made available.

Therefore, the Frontex approach to the availability of information has significant implications for what is publicly known regarding fundamental rights during Frontex operations. As researcher and journalist Apostolos Fotiadis commented on JROs:

The picture we see coming from what is publicly available is the perspective the Agency prefers to create about what happens during its coordinated returns flights [...] this perspective is a very selective one. (Fotiadis in 'Under surveillance': Monitoring at the border, 2020)

We would argue that this observation applies to all aspects of Frontex operations and fundamental rights governance. The public unavailability of information not only render aspects of Frontex activities obscure – the SIR mechanism is one such example– but also allows the Agency to control the agenda and narratives around fundamental rights by being selective on what information is being released (Fotiadis in 'Under surveillance': Monitoring at the border, 2020). For example, in contrast to its reluctance to make information on operations and fundamental rights available, Frontex very likely passed on documents to journalists covering an incident involving the Turkish armed forces shooting at Frontex (Christides et al., 2020). Frontex attitudes to information and communication thus enable them to maintain secrecy over its activities and avoid accountability, if not to European institutions, to the wider public. The attempts of Frontex to control information, and its responses to civil society actors – such as in the case of requesting legal fees from transparency activists – creates doubts as to whether the Agency is willing to truly engage with criticisms on the fundamental rights dimensions of their operations.

## 10. Conclusion

Although the Frontex press officer acknowledged some of the limitations of monitoring and accountability mechanisms ('it takes time, and it might be a question of awareness'), she stated that they

are working, because the serious incident reports are being filed, which shows that the officers are using them. The fundamental rights officer is looking into every single operation, and there is no operation that takes place without all her comments being taken into consideration (Interview 1).

Yet, our analysis confirms the observations human rights organisations, NGOs, researchers and journalists that the monitoring and accountability mechanisms present serious deficiencies, to the point we can talk about a failing accountability regime. We discussed several such shortcomings throughout the report. At the level of their design, the mechanisms are administrative in nature, internal to Frontex and therefore lacking in independence and impartiality. The key monitoring mechanism for Frontex operations – the Serious Incident Reporting system – is underused and despite its mandatory nature does not seem to be used at large within the agency and its staff.

At a first level, the deficiencies can be attributed to several factors: the design of the role of the monitoring and accountability mechanisms within the legal and policy framework, the vagueness of provisions and over-reliance on internal guidance, and the implementation of provisions both by Frontex and national authorities. However, a deeper reflection of the failures of the accountability regime needs to interrogate the commitment of Frontex to upholding fundamental rights and be accountable, as well as considering the political context of border management. At the level of implementation on the ground, while provisions for the training and conduct of deployed and national staff have led to an internalisation of narratives of human rights (Perkowski, 2018; Horii, 2012; Aas and Gundhus, 2015), the underuse of the Serious Incident Reporting and individual complaints mechanisms suggests that this does not necessarily translate into effective action on identifying and reporting violations. Moreover, the recommendations of the two bodies designed to advise Frontex on fundamental rights can be easily dismissed, as the power to decide is the prerogative of the Executive Director. This is not just a theoretical possibility: both publicly available and internal documents record many rejected recommendations; our two case studies, on the recommendation to withdraw from Hungary and on Frontex's responses to fundamental rights violations in Evros are two further examples of the power of the Executive Director to reject recommendations, at the expense of fundamental rights concerns. The absence of independent mechanisms able to overcome executive decisions that undermine fundamental rights is exacerbated by equally non-independent arrangements for investigating violations, since such powers remain largely with member states and in some areas with the Executive Director.

Our findings also suggest that Frontex's attitude towards accountability remains problematic. The weak internal accountability regime is in itself not conducive to actions and decisions that would promote greater compliance to fundamental rights – something illustrated for example by not reporting and initiating investigations of fundamental rights violations by deployed Frontex officers and rejecting recommendations by its advisory bodies. The lack of independent monitoring and accountability mechanisms is not conducive to stronger practices that would safeguard fundamental rights. However, we can observe this negative stance in

other areas of accountability – towards the European Parliament, to which Frontex is politically accountable – and accountability towards the wider public. As we have demonstrated, Frontex attempts to evade accountability to both actors by utilizing a number of strategies: using information instrumentally; claiming it is both present and absent in operational areas; invoking the presence of monitoring and accountability mechanisms while underplaying their deficiencies in terms of implementation; deflecting responsibility to national authorities; and controlling the availability of information on their fundamental practices internally and to other institutions and the public.

More importantly, decisions and practices related to fundamental rights monitoring and accountability are subject to pressures by the political imperative of controlling the external borders of the European Union, which is the key task of Frontex. The significant tensions between Frontex's border management mandate and their obligations to respect and comply with fundamental rights such as international refugee rights have repeatedly been pointed out over the last decade (Hruschka, 2020; Keller et al., 2011; Marin, 2014b). Yet, despite the strengthening of the accountability regime, and clearer obligations to both monitor and prevent fundamental rights violations, these tensions have remained. As our case studies on the Greek-Turkish border and Hungary illustrate, border management aims, including supporting member states in controlling the external borders of the EU, are consistently prioritised over fundamental rights considerations, to the point that they appear as irreconcilable.

Finally, our report points out severe shortcomings in the way the executive order of the European Union has been constructed over the last two decades. Even though delegation of powers to secondary institutions is still constrained by the Meroni doctrine, there are around 40 European Union agencies (depending on the definition). In the case of Frontex, the agency has been expanded to maintain a standing corps of border guards numbering 10.000 until 2027, thus creating the very first EU police force. However, this extraordinary growth of executive institutions has not been accompanied by an equally extraordinary expansion of a system of checks and balances, e.g. by a stronger supervisory mandate for the European Parliament or an expansion of judicial review, on the level of the European Union, of the agency's activities.

These weaknesses, both within the architecture and functioning of the Frontex accountability regime and the wider architecture of Frontex as an EU agency within the EU's executive branch have grave effects on fundamental rights. The expanded border management capabilities and law enforcement responsibilities of the Agency have increased the risk of violating fundamental rights as well as core tenets of international and EU asylum law such as access to asylum and the principle of non-refoulement. The shortcomings in the governance framework of Frontex, including its accountability regime, render it nearly impossible to safeguard the rights of people attempting to cross the external borders of the EU, or to seek redress when their rights are violated.

## Recommendations

We conclude with the following recommendations:

1. We recommend that the Parliament and the Council amend the legal mandate of Frontex to **include data gathering and analytical processing of fundamental rights violations as part of its risk analysis activities**. We propose to include quantitative and qualitative data

as indicators in its Common Integrated Risk Analysis Modell (CIRAM) in order to address fundamental rights violations as a risk factor for professional border management (component 'vulnerability') as well as a risk factor for the development of the European Union in line with fundamental rights obligations (component 'impact'). We further propose for visual layers representing this data to be included in both EUROSUR and JORA, and to make the occurrence of fundamental rights violations an indicator in the periodic vulnerability assessments carried out by the agency concerning member states' borders.

2. We recommend that the Parliament and the Council establish a **legally binding framework for the suspension of operations**, based on recommendations of the FRO, the CF, or competent third parties.

3. We recommend that the Parliament and the Council provide for **access to internal Frontex documents through a publicly available database** and the creation of an independent arbiter such as the European Ombudsperson to balance requests for transparency with the operational constraints of the agency.

4. We recommend that the Parliament and the Council establish a **better accountability framework for the agency, including a stronger supervisory role of the Parliament** and provisions for external monitoring.

5. We recommend for the European Union to adopt a **strong constitutional framework for executive agencies endowed with an operational mandate**, including mechanisms for independent adjudication of claims against European Union agencies that constitute effective remedies.

6. Finally, we recommend that Frontex be tasked to develop and implement a renewed **strategy for preventing fundamental rights violations at the external borders of the European Union** and to include this strategy as a central part of the agency's mandate to harmonise and professionalise border management in the European Union.

## **Appendix 1: List of Interviewees/respondents**

Interview 1	Frontex Press Office
Interview 2	CF member
Interview 3	CF member
Interview 4	CF member
Interview 5	CF member
Interview 6	Human rights organisation
Interview 7	Police Director, Greece
Interview 8	Police Director, Greece
Conversation 1	Human rights organisation
Conversation 2	Journalist
Conversation 3	Journalist



## References and sources

- Aas, K.F. and Gundhus, H.O., 2015. Policing humanitarian borderlands: Frontex, human rights and the precariousness of life. *British Journal of Criminology*, [online] 55(1), pp.1–18. Available at: <<http://bjc.oxfordjournals.org/content/55/1/1.short>> [Accessed 17 Jan. 2017].
- Abdulrahim, R., 2020. Greek Police Are Rounding Up Asylum Seekers and Forcing Them Into Turkey, Migrants Say. *Wall Street Journal: World*. [online] 20 May. Available at: <<https://www.wsj.com/articles/greek-police-are-rounding-up-asylum-seekers-and-forcing-them-into-turkey-migrants-say-11589989139>> [Accessed 24 Jul. 2020].
- AIDA, 2015. *Country Report: Hungary - Fourth Update*. Available at: <[https://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_update.iv\\_\\_0.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_update.iv__0.pdf)> [Accessed 30 Jul. 2020].
- AIDA, 2020a. *Country Report: Greece - 2019 Update*. Available at: <[https://www.asylumineurope.org/sites/default/files/report-download/aida\\_gr\\_2019update.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2019update.pdf)> [Accessed 30 Jul. 2020].
- AIDA, 2020b. *Country Report: Hungary - 2019 Update*. Available at: <[https://www.asylumineurope.org/sites/default/files/report-download/aida\\_hu\\_2019update.pdf](https://www.asylumineurope.org/sites/default/files/report-download/aida_hu_2019update.pdf)> [Accessed 30 Jul. 2020].
- Alarm Phone, 2016. *WatchTheMed Alarm Phone Denounces Illegal Push-back Operation in Frontex Presence!* [online] AlarmPhone. Available at: <<https://alarmphone.org/en/2016/06/15/watchthemed-alarm-phone-denounces-illegal-push-back-operation-with-frontex-present/>> [Accessed 24 Jul. 2020].
- Alarm Phone, 2019. *Aegean Regional Analysis*. [online] AlarmPhone. Available at: <<https://alarmphone.org/en/2019/06/28/alarm-phone-aegean-report/>> [Accessed 24 Jul. 2020].
- Alarm Phone, 2020a. *Alarm Phone on Twitter: "+++ Push-Back in the Aegean +++ People in distress who had called #AlarmPhone on 23/05 in Greek waters near Samothraki report that contact to us had broken down as they were pushed-back by two Greek Coastguard vessels, type Lambro 57 and left in life-threatening danger. 1/3"*. [online] Twitter. Available at: <[https://twitter.com/alarm\\_phone/status/1265569117878222859](https://twitter.com/alarm_phone/status/1265569117878222859)> [Accessed 24 Jul. 2020].
- Alarm Phone, 2020b. *Push Backs: The new old Routine in the Aegean Sea*. [online] AlarmPhone. Available at: <<https://alarmphone.org/en/2020/05/14/push-backs-the-new-old-routine-in-the-aegean-sea/>> [Accessed 24 Jul. 2020].
- Alarm Phone, Borderline Europe, Mediterraneana and Sea-Watch, 2020. *Remote control: The EU-Libya collaboration in mass interceptions of migrants in the Central Mediterranean*. Available at: <[https://www.borderline-europe.de/sites/default/files/readingtips/RemoteControl\\_Report\\_0620.pdf](https://www.borderline-europe.de/sites/default/files/readingtips/RemoteControl_Report_0620.pdf)> [Accessed 30 Jul. 2020].
- Amnesty International, 2010. *The Dublin II Trap. Transfers of Asylum Seekers to Greece*. [online] London. Available at: <<https://www.amnesty.org/en/documents/document/?indexNumber=EUR25%2f001%2f2010&language=en>> [Accessed 7 Feb. 2017].
- Amnesty International, 2015. *Fenced Out: Hungary's violations of the rights of refugees and migrants*. Available at: <<https://www.amnesty.org/download/Documents/EUR2726142015ENGLISH.pdf>> [Accessed 30 Jul. 2020].
- Amnesty International, 2020a. *Caught in a Political Game: Asylum-Seekers and Migrants on the Greece/Turkey Border pay the price for Europe's failures*. Available at:

- <<https://www.amnesty.org/download/Documents/EUR0120772020ENGLISH.PDF>> [Accessed 30 Jul. 2020].
- Amnesty International, 2020b. *Greece/Turkey: Asylum-seekers and migrants killed and abused at borders*. [online] Available at: <<https://www.amnesty.org/en/latest/news/2020/04/greece-turkey-asylum-seekers-and-migrants-killed-and-abused-at-borders/>> [Accessed 24 Jul. 2020].
- ARSIS, Greek Council for Refugees and HumanRights360, 2018. *The new normality: Continuous push-backs of third country nationals on the Evros river*. Available at: <<https://www.humanrights360.org/the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river/>> [Accessed 30 Jul. 2020].
- astraparis.gr, 2020. *Είναι εξωγήινοι στην παραλία Μονολιάς, αυτοί που βλέπουμε κύριε Μηταράκη; [those we see in the Manolia beach, are they aliens, Mr Mitarakis?]*. [online] Αστραπάρης. Available at: <<https://astraparis.gr/einai-exogiinoi-stin-paralia-monolias-aytoi-poy-vlepoyme-kyrie-mitaraki-vinteo-kai-foto/>> [Accessed 24 Jul. 2020].
- Barry, A. and Walters, W., 2003. From EURATOM to "Complex Systems": Technology and European Government. *Alternatives: Global, Local, Political*, [online] 28(3), pp.305–329. Available at: <<http://www.jstor.org/stable/40645083>>.
- Bellingcat, 2020. *The Killing of Muhammad Gulzar*. [online] bellingscat. Available at: <<https://www.bellingcat.com/news/uk-and-europe/2020/05/08/the-killing-of-muhammad-gulzar/>> [Accessed 24 Jul. 2020].
- Border Violence Monitoring Network, 2019. *Illegal Push-backs and Border Violence Reports, Balkan Region*. Available at: <<https://www.borderviolence.eu/balkan-region-report-december-2019/>> [Accessed 30 Jul. 2020].
- Border Violence Monitoring Network, 2020. *COVID-19 and Border Violence along the Balkan Route*. [online] Border Violence Monitoring Network. Available at: <<http://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>> [Accessed 24 Jul. 2020].
- Bovens, M., 2007. Analysing and Assessing Accountability: A Conceptual Framework. *European Law Journal*, [online] 13(4), pp.447–468. Available at: <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1468-0386.2007.00378.x>> [Accessed 28 Jul. 2020].
- von der Burchard, H., 2020. Frontex sends reinforcements to Greece amid migrant crisis. *Politico Europe*. [online] 1 Mar. Available at: <<https://web.archive.org/web/20200301191847/https://www.politico.eu/article/frontex-sends-reinforcements-greece-migrant-crisis-turkey/>> [Accessed 24 Jul. 2020].
- Busuioc, M., Groenleer, M. and Trondal, J. eds., 2012. *The agency phenomenon in the European Union: Emergence, institutionalisation and everyday decision-making*. European policy Research Unit series. Manchester : New York: Manchester University Press ; Distributed in the United States by Palgrave Macmillan.
- Campesi, G., 2014. Frontex, the Euro-Mediterranean Border and the Paradoxes of Humanitarian Rhetoric. *South East European Journal of Political Science*, [online] 2(3), pp.126–134. Available at: <<http://www.ssrn.com/abstract=2519410>> [Accessed 25 Mar. 2019].
- Campesi, G., 2018. European Border and Coast Guard (Frontex): Security, Democracy, and Rights at the EU Border. In: *Oxford Research Encyclopedia of Criminology and Criminal Justice*. [online] Oxford University Press. Available at: <<http://criminology.oxfordre.com/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-354>> [Accessed 14 Apr. 2020].

- Carrera, S. and Guild, E., 2010. 'Joint Operation RABIT 2010': FRONTEX assistance to Greece's border with Turkey: Revealing the deficiencies of Europe's Dublin Asylum System. CEPS Liberty and Security in Europe. [online] Available at: <<http://www.ceps.eu/book/%E2%80%99joint-operation-rabit-2010%E2%80%99%E2%80%93frontex-assistance-greece%E2%80%99s-border-turkey-revealing-deficiencies>> [Accessed 3 Dec. 2016].
- Carrera, S., den Hertog, L. and Parkin, J., 2013. The Peculiar Nature of EU Home Affairs Agencies in Migration Control: Beyond Accountability versus Autonomy? *European Journal of Migration and Law*, [online] 15(4), pp.337–358. Available at: <[https://brill.com/abstract/journals/emil/15/4/article-p337\\_1.xml](https://brill.com/abstract/journals/emil/15/4/article-p337_1.xml)> [Accessed 2 Apr. 2019].
- Carrera, S. and Stefan, M., 2018. *Complaint mechanisms in border management and expulsion operations in Europe: Effective remedies for victims of human rights violations?* Available at: <<https://www.ceps.eu/ceps-publications/complaint-mechanisms-border-management-and-expulsion-operations-europe-effective/>> [Accessed 30 Jul. 2020].
- Christides, G., Gebauer, M., Lüdke, S., Popp, M. and Wiedmann-Schmidt, W., 2020. Türkische Soldaten sollen auf deutsche Frontex-Beamte gezielt haben. *Spiegel Online*. [online] 30 Apr. Available at: <<https://www.spiegel.de/politik/ausland/tuerkische-soldaten-sollen-auf-deutsche-frontex-beamte-gezielt-haben-a-ad7bd4ca-d7df-430e-b40a-7cf7e59bd92a>> [Accessed 24 Jul. 2020].
- Christides, G. and Lüdke, S., 2020. Griechenland setzt offenbar Flüchtlinge auf dem Meer aus. *Spiegel Online*. [online] 16 Jun. Available at: <<https://www.spiegel.de/politik/ausland/griechenland-setzt-offenbar-fluechtlinge-auf-dem-meer-aus-a-14b5cf26-df90-4838-83c0-f5a2d6bdd7b9>> [Accessed 24 Jul. 2020].
- Christides, G., Lüdke, S. and Popp, M., 2019. Videos Show Apparent Illegal Pushback of Migrants. *Spiegel Online*. [online] 13 Dec. Available at: <<https://www.spiegel.de/international/global/societies/greece-videos-show-apparent-illegal-pushback-of-migrants-a-1301228.html>> [Accessed 24 Jul. 2020].
- Christides, G., Lüdke, S. and Popp, M., 2020. The Turkish Woman Who Fled Her Country only To Get Sent Back. *Spiegel Online*. [online] 8 Feb. Available at: <<https://www.spiegel.de/international/europe/the-turkish-woman-who-fled-her-country-only-to-get-sent-back-a-fd2989c7-0439-4ecb-9263-597c46ba306e>> [Accessed 24 Jul. 2020].
- Christopoulos, D., 2014. The Hellenic Police. In: D. Christopoulos, ed. *Mapping Ultra-Right Extremism, Xenophobia and Racism within the Greek State Apparatus*. Brussels: Rosa-Luxemburg-Stiftung, pp.20–42.
- Commission of the European Communities, 2001. *European Governance. A White Paper*. Brussels.
- Committee on Civil Liberties, Justice and Home Affairs Ordinary meeting, 06 November 2019, 10:00 - 12:29. 2019. Available at: <[https://multimedia.europarl.europa.eu/en/committee-on-civil-liberties-justice-and-home-affairs-ordinary-meeting-ordinary-meeting\\_20191106-1000-COMMITTEE-LIBE\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-civil-liberties-justice-and-home-affairs-ordinary-meeting-ordinary-meeting_20191106-1000-COMMITTEE-LIBE_vd)> [Accessed 27 Jul. 2020].
- Consolidated Version of the Treaty on the Functioning of the European Union*.
- Correctiv, 2019. *Frontex: Watching the watchers*. [online] correctiv.org. Available at: <<https://correctiv.org/en/top-stories-en/2019/08/15/frontex-watching-the-watchers/>> [Accessed 28 Jul. 2020].
- Council of Europe, 2013. *Frontex: Human rights responsibilities*. [online] Parliamentary Assembly. Available at: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=19547&lang=en>> [Accessed 24 Jul. 2020].

- Council of Europe, 2018a. *Germany: Visit 2018 (return flight)*. [online] Available at: <[https://rm.coe.int/16808d6f12](https://hudoc.cpt.coe.int/eng#\{%22sort%22:[%22CPTDocumentDate%20Descending,CPTDocumentID%20Ascending,CPTSectionNumber%20Ascending%22],%22tabview%22:[%22document%22],%22CPTSectionID%22:[%22p-deu-20180813-en%22]\}> [Accessed 28 Jul. 2020].</a></p>
<p>Council of Europe, 2018b. <i>Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017</i>. Strasbourg. Available at: <<a href=)> [Accessed 30 Jul. 2020].
- Council of Europe, 2018c. *Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 20 to 26 October 2017*. Strasbourg. Available at: <<https://rm.coe.int/16808d6f14>> [Accessed 30 Jul. 2020].
- Council of Europe, 2019. *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018*. Strasbourg. Available at: <<https://rm.coe.int/1680930c9a>> [Accessed 30 Jul. 2020].
- Council of the European Union, 2020a. *Annual report on the practical application of Regulation (EU) No 656/2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex*. Brussels. Available at: <<https://data.consilium.europa.eu/doc/document/ST-6294-2020-INIT/en/pdf>> [Accessed 30 Jul. 2020].
- Council of the European Union, 2020b. *State of play of the implementation of the EBCG 2.0 Regulation in view of current challenges*. Brussels. Available at: <<https://www.statewatch.org/media/documents/news/2020/may/eu-council-frontex-ECBG-state-of-play-7607-20.pdf>> [Accessed 30 Jul. 2020].
- Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.
- Curtin, D., 2005. Delegation to EU non-majoritarian agencies and emerging practices of public accountability. In: D. Geradin, R. Muñoz and N. Petit, eds. *Regulation through agencies in the EU: A new paradigm of European governance*. Cheltenham, UK; Northampton, MA: Edward Elgar. pp.88–119.
- Curtin, D., 2007. Holding (Quasi-)Autonomous EU Administrative Actors to Public Account. *European Law Journal*, [online] 13(4), pp.523–541. Available at: <<http://doi.wiley.com/10.1111/j.1468-0386.2007.00382.x>> [Accessed 2 Apr. 2019].
- Dawson, M., 2017. *The Governance of EU Fundamental Rights*. Cambridge Studies in European Law and Policy. [online] Cambridge: Cambridge University Press. Available at: <<https://www.cambridge.org/core/books/governance-of-eu-fundamental-rights/9023A9F6E14B93F60B4BDE867F45E50E>> [Accessed 24 Jul. 2020].
- dm-aegean, 2018. *Deportation as Business Model*. [online] Available at: <<https://dm-aegean.bordermonitoring.eu/2018/10/20/deportation-as-a-business-model/>> [Accessed 24 Jul. 2020].
- dm-aegean, 2020. *Greece carries out collective expulsion of over 900 asylum seekers under the complicit silence of the European Union*. [online] Available at: <<https://dm-aegean.bordermonitoring.eu/2020/06/17/greece-carries-out-collective-expulsion-of-over-900-asylum-seekers-under-the-complicit-silence-of-the-european-union/>> [Accessed 24 Jul. 2020].

- Domínguez, P., 2020. *Frontex Legal Bill Risks Chilling Effect on Defence of Transparency*. [online] Access Info Europe. Available at: <<https://www.access-info.org/blog/2020/03/02/frontex-legal-bill-risks-transparency/>> [Accessed 24 Jul. 2020].
- ECRE, 2018. *ECRE Comments on the Commission Proposal for a Regulation on the European Border and Coast Guard*. Available at: <[https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-EU-Asylum-Agency\\_July-2016-final\\_2.pdf](https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-EU-Asylum-Agency_July-2016-final_2.pdf)> [Accessed 30 Jul. 2020].
- ECRE, 2019. *Renewed Critical Focus on Frontex Internal Reporting*. [online] Available at: <<https://www.ecre.org/renewed-critical-focus-on-frontex-internal-reporting/>> [Accessed 24 Jul. 2020].
- Ekelund, H., 2010. *The agencification of Europe: Explaining the establishment of European Community agencies*. [PhD Thesis] University of Nottingham. Available at: <<http://eprints.nottingham.ac.uk/11269/>> [Accessed 9 Aug. 2017].
- ERT, 2020. *Γιγαντιαία επιχείρηση φύλαξης των συνόρων στον Έβρο [Gigantic operation of border protection in Evros]*. 2020. Available at: <<https://www.youtube.com/watch?v=9o2QBY38yak>> [Accessed 24 Jul. 2020].
- euractiv.com, 2019. EU border force Frontex accused of allowing abuse of migrants. *www.euractiv.com: Global Europe*. [online] 6 Aug. Available at: <<https://www.euractiv.com/section/global-europe/news/eu-border-force-frontex-accused-of-allowing-abuse-of-migrants/>> [Accessed 24 Jul. 2020].
- European Commission, 2015. *Commission opens infringement procedure against Hungary concerning its asylum law*. [Press Release] Brussels. Available at: <[https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_15\\_6228](https://ec.europa.eu/commission/presscorner/detail/EN/IP_15_6228)> [Accessed 24 Jul. 2020].
- European Commission, 2016. *Letter: Situation at Hungary's southern border*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- European Commission, 2020. *Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel*. [Statement] Kastanies. Available at: <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_380](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380)> [Accessed 24 Jul. 2020].
- European Ombudsman, 2013a. *Decision of the European Ombudsman closing own-initiative inquiry OI/5/2012/BEH-MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)*. Available at: <<https://www.ombudsman.europa.eu/fr/decision/en/52477>> [Accessed 30 Jul. 2020].
- European Ombudsman, 2013b. *Special Report of the European Ombudsman in own-initiative inquiry OI/5/2012/BEH-MHZ concerning Frontex*. Available at: <<https://www.ombudsman.europa.eu/fr/special-report/en/52465>> [Accessed 30 Jul. 2020].
- European Parliament, 2008. *Evaluation and future development of FRONTEX and EUROSUR*. [Texts Adopted] Available at: <<https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0633+0+DOC+XML+V0//EN>> [Accessed 24 Jul. 2020].
- European Parliament, 2019. *Parliamentary questions: Frontex's Multipurpose Aerial Surveillance Service in Croatia*. [online] Available at: <[https://www.europarl.europa.eu/doceo/document/E-9-2019-003553\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2019-003553_EN.html)> [Accessed 24 Jul. 2020].

- European Parliament, 2020a. *Answer for question E-002654/19*. [online] Available at: <[https://www.europarl.europa.eu/doceo/document/E-9-2019-002654-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2019-002654-ASW_EN.html)> [Accessed 24 Jul. 2020].
- European Parliament, 2020b. *Answer for question E-003553/2019, E-003554/2019, E-003555/2019*. [online] Available at: <[https://www.europarl.europa.eu/doceo/document/E-9-2019-003553-ASW\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2019-003553-ASW_EN.html)> [Accessed 24 Jul. 2020].
- Fernandez Rojo, D., 2016. The introduction of an individual complaint mechanism within FRONTEX: Two steps forward, one step back. *Tijdschrift voor Bestuurswetenschappen en Publiek Recht*.
- Fink, M., 2018. *Frontex and human rights: Responsibility in 'multi-actor situations' under the ECHR and EU public liability law*. First Edition ed. Oxford studies in European law. Oxford & New York: Oxford University Press.
- Forensic Architecture, 2020. *The Killing Of Muhammad Gulzar*. [online] Available at: <<https://forensic-architecture.org/investigation/the-killing-of-muhammad-gulzar>> [Accessed 24 Jul. 2020].
- Fotiadis, A., 2016. E.U. Border Agency Still Unaccountable on Refugees' Rights. *News Deeply*. [online] 18 Nov. Available at: <<https://www.newsdeeply.com/refugees/community/2016/11/18/e-u-border-agency-still-unaccountable-on-refugees-rights>> [Accessed 24 Jul. 2020].
- Fotiadis, A., 2020. *Frontex's History of Handling Abuse Evidence Dogs Balkan Expansion*. [online] Balkan Insight. Available at: <<https://balkaninsight.com/2020/02/06/frontexs-history-of-handling-abuse-evidence-dogs-balkan-expansion/>> [Accessed 24 Jul. 2020].
- FRA, 2016. *Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy*. Vienna.
- FRA, 2018a. *How the Eurosur regulation affects fundamental rights*. [online] Available at: <[http://publications.europa.eu/publication/manifestation\\_identifier/PUB\\_TK0318264ENN](http://publications.europa.eu/publication/manifestation_identifier/PUB_TK0318264ENN)> [Accessed 24 Jul. 2020].
- FRA, 2018b. *The revised European Border and Coast Guard Regulation and its fundamental rights implications*. Available at: <<https://primarysources.brillonline.com/browse/human-rights-documents-online/the-revised-european-border-and-coast-guard-regulation-and-its-fundamental-rights-implications;hrdhrd9992201899920040>> [Accessed 24 Jul. 2020].
- FRA, 2019. *Forced return monitoring systems – State of play in 28 EU Member States - 2019 update*. [online] Available at: <<https://fra.europa.eu/en/publication/2019/forced-return-monitoring-systems-2019-update>>.
- Frelick, B., 2008. *Stuck in a revolving door: Iraqis and other asylum seekers and migrants at the Greece/Turkey entrance to the European Union*. [online] New York: Human Rights Watch. Available at: <[https://www.hrw.org/sites/default/files/reports/greeceturkey1108web\\_0.pdf](https://www.hrw.org/sites/default/files/reports/greeceturkey1108web_0.pdf)> [Accessed 30 Jul. 2020].
- Frelick, B., 2009. *Pushed back, pushed around: Italy's forced return of boat migrants and asylum seekers, Libya's mistreatment of migrants and asylum seekers*. New York: Human Rights Watch. Available at: <[https://www.hrw.org/sites/default/files/reports/italy0909web\\_0.pdf](https://www.hrw.org/sites/default/files/reports/italy0909web_0.pdf)> [Accessed 30 Jul. 2020].
- Frontex, 2011. *Frontex Fundamental Rights Strategy*. [online] Available at: <[https://www.statewatch.org/media/documents/observatories\\_files/frontex\\_observatory/2011-03-31-frontex-fundamental-rights-strategy.pdf](https://www.statewatch.org/media/documents/observatories_files/frontex_observatory/2011-03-31-frontex-fundamental-rights-strategy.pdf)> [Accessed 27 Jul. 2020].

- Frontex, 2012a. *Common integrated risk analysis model. A comprehensive update. Version 2.0*. Warsaw: Frontex. Copy with the authors.
- Frontex, 2012b. *Guidelines for risk analysis units: Structure and tools for the application of CIRAM version 2.0*. Warsaw: Frontex. Copy with the authors.
- Frontex, 2013a. *I Fundamental Rights Officer Report to Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2013b. *II Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2013c. *III Fundamental Rights Officer Report To: Frontex Consultative Forum on Fundamental Rights and Frontex Management Board*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2014a. *Annual Report - Frontex Consultative Forum on Fundamental Rights - 2013*. Warsaw. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>> [Accessed 30 Jul. 2020].
- Frontex, 2014b. *Consolidated Version of the Working Methods of the Frontex Consultative Forum and Modalities of the Transmission of Information to the Frontex Consultative Forum*. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>> [Accessed 30 Jul. 2020].
- Frontex, 2014c. *IV Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2014d. *VI Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2014e. *VII Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2014f. *VIII Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2015a. *IX Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2015b. *Management Board Decision No 29/2015 of 09 September 2015 on the composition of the Frontex Consultative Forum on Fundamental Rights*. [online] Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2015/MB\\_Decision\\_29\\_2015\\_on\\_the\\_composition\\_of\\_the\\_Frontex\\_CF\\_on\\_fundamental\\_rights.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2015/MB_Decision_29_2015_on_the_composition_of_the_Frontex_CF_on_fundamental_rights.pdf)> [Accessed 29 Jul. 2020].

- Frontex, 2015c. *Second Annual Report - Frontex Consultative Forum on Fundamental Rights - 2014*. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>> [Accessed 30 Jul. 2020].
- Frontex, 2015d. *Serious Incident Report no 48*. Available at: <<https://www.asktheeu.org/en/request/sirs#incoming-19354>> [Accessed 28 Jul. 2020].
- Frontex, 2015e. *Specific annex of the Operational Plan JO Flexible operational activities 2015 2015/LBS/01*. Available at: <[https://www.asktheeu.org/en/request/frontex\\_operations\\_and\\_incidents#outgoing-12556](https://www.asktheeu.org/en/request/frontex_operations_and_incidents#outgoing-12556)> [Accessed 28 Jul. 2020].
- Frontex, 2015f. *XI Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2015g. *XII Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2016a. *11th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].
- Frontex, 2016b. *9th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].
- Frontex, 2016c. *Annex 14 Serious Incident Reporting*. Available at: <<https://www.statewatch.org/media/documents/news/2016/aug/frontex-serious-incident-reporting.pdf>> [Accessed 29 Jul. 2020].
- Frontex, 2016d. *Fundamental Rights Officer Special Report on Serious Incident Reports (SIRs) received in 2015*. [online] aleph.occrp.org. Available at: <<https://aleph.occrp.org/entities/37536636.c147b5ec25a709a5490db3dc2fa087f2ca80ee13>> [Accessed 28 Jul. 2020].
- Frontex, 2016e. *General Report 2015*. Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/Annual\\_report/2015/General\\_Report\\_2015.pdf](https://frontex.europa.eu/assets/Key_Documents/Annual_report/2015/General_Report_2015.pdf)> [Accessed 28 Jul. 2020].
- Frontex, 2016f. *Letter from Executive director: Situation at Hungary's southern border*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2016g. *Letter from the ED to CF: Consultative forum's request on Chios*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2016h. *Serious Incident Report no 331*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2016i. *Serious Incident Report no 341*. Available at: <<https://www.asktheeu.org/en/request/sirs#incoming-19354>> [Accessed 28 Jul. 2020].
- Frontex, 2016j. *Serious Incident Report no 375*. Available at: <<https://www.asktheeu.org/en/request/sirs#incoming-19354>> [Accessed 28 Jul. 2020].



Frontex, 2016k. *Serious Incident Report no 384*. Available at: <[https://www.asktheeu.org/en/request/request\\_for\\_consultative\\_forum\\_m#incoming-22259](https://www.asktheeu.org/en/request/request_for_consultative_forum_m#incoming-22259)> [Accessed 28 Jul. 2020].

Frontex, 2016l. *Serious Incident Report no 445*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].

Frontex, 2016m. *Serious Incident Report no 526*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].

Frontex, 2016n. *Situation at the Hungarian-Serbian Border, 2016 FRO Observations*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].

Frontex, 2016o. *Specific annex of the Operational Plan JO Flexible operational activities 2016 Land on border surveillance 2016/LBS/01*. Available at: <[https://www.asktheeu.org/en/request/frontex\\_operations\\_and\\_incidents#outgoing-12556](https://www.asktheeu.org/en/request/frontex_operations_and_incidents#outgoing-12556)> [Accessed 28 Jul. 2020].

Frontex, 2016p. *The Agency's Rules on the Complaint Mechanism*. Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/Complaints/Annex\\_1\\_-\\_Frontex\\_rules\\_on\\_the\\_complaints\\_mechanism.pdf](https://frontex.europa.eu/assets/Key_Documents/Complaints/Annex_1_-_Frontex_rules_on_the_complaints_mechanism.pdf)> [Accessed 28 Jul. 2020].

Frontex, 2016q. *XIII Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].

Frontex, 2016r. *XIV Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].

Frontex, 2016s. *XVI Fundamental Rights Officer Report To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].

Frontex, 2016t. *XVII Fundamental Rights Officer Report to the Management Board*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].

Frontex, 2017a. *12th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].

Frontex, 2017b. *13th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].

Frontex, 2017c. *14th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].

Frontex, 2017d. *Annexes of operational Plan JO Flexible Operational Activities 2017 Land on border surveillance 2017/LBS/01*. Available at: <[https://www.asktheeu.org/en/request/frontex\\_operations\\_and\\_incidents#outgoing-12556](https://www.asktheeu.org/en/request/frontex_operations_and_incidents#outgoing-12556)> [Accessed 28 Jul. 2020].

- Frontex, 2017e. *FCO note to deployed officers Frontex activities at the HUN-SRB Border*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2017f. *Fourth Annual Report - Frontex Consultative Forum on Fundamental Rights - 2016*. Warsaw. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>> [Accessed 30 Jul. 2020].
- Frontex, 2017g. *FRO field visit to Hungary 13-15 March 2017: FRO observations*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2017h. *Fundamental Rights Officer's Observations to return operations conducted in the 1st Semester of 2017*. Available at: <<https://aleph.occrp.org/entities/37536636.c147b5ec25a709a5490db3dc2fa087f2ca80ee13>> [Accessed 28 Jul. 2020].
- Frontex, 2017i. *Letter from Executive director: Information request regarding Hungarian border*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2017j. *Letter from Executive director to the Consultative Forum: Recommendation on Frontex activities at the Hungarian-Serbian Border*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex, 2017k. *Operational plan Main Part JO Flexible Operational Activities 2017 Land on border surveillance 2017/LBS/01*. Available at: <[https://www.asktheeu.org/en/request/frontex\\_operations\\_and\\_incidents#outgoing-12556](https://www.asktheeu.org/en/request/frontex_operations_and_incidents#outgoing-12556)> [Accessed 28 Jul. 2020].
- Frontex, 2017l. *Serious Incident Report no 606*. Available at: <[https://www.asktheeu.org/en/request/request\\_for\\_consultative\\_forum\\_m#incoming-22259](https://www.asktheeu.org/en/request/request_for_consultative_forum_m#incoming-22259)> [Accessed 28 Jul. 2020].
- Frontex, 2017m. *Serious Incident Report no 676*. Available at: <[https://www.asktheeu.org/en/request/request\\_for\\_consultative\\_forum\\_m#incoming-22259](https://www.asktheeu.org/en/request/request_for_consultative_forum_m#incoming-22259)> [Accessed 28 Jul. 2020].
- Frontex, 2017n. *XIX Fundamental Rights Officer Report to the Management Board*. Available at: <[https://www.asktheeu.org/en/request/fro\\_documents#incoming-20345](https://www.asktheeu.org/en/request/fro_documents#incoming-20345)> [Accessed 28 Jul. 2020].
- Frontex, 2017o. *XVIII Fundamental Rights Officer Report to the Management Board*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2017p. *XX Fundamental Rights Officer Report to the Management Board*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2018a. *15th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].
- Frontex, 2018b. *16th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].

- Frontex, 2018c. *17th Meeting Frontex Consultative Forum on Fundamental Rights*. Available at: <[https://www.asktheeu.org/en/request/documents\\_on\\_frontex\\_consultativ#incoming-18575](https://www.asktheeu.org/en/request/documents_on_frontex_consultativ#incoming-18575)> [Accessed 28 Jul. 2020].
- Frontex, 2018d. *Annexes of operational Plan JO Flexible Operational Activities 2018 Land on border surveillance 2018/ORD/01*. Available at: <[https://www.asktheeu.org/en/request/frontex\\_operations\\_and\\_incidents#incoming-20549](https://www.asktheeu.org/en/request/frontex_operations_and_incidents#incoming-20549)> [Accessed 30 Jul. 2020].
- Frontex, 2018e. *Code of Conduct for Return Operations and Return Interventions coordinated or organised by Frontex*. Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/Code\\_of\\_Conduct/Code\\_of\\_Conduct\\_f\\_or\\_Return\\_Operations\\_and\\_Return\\_Interventions.pdf](https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_f_or_Return_Operations_and_Return_Interventions.pdf)> [Accessed 24 Jul. 2020].
- Frontex, 2018f. *Fifth Annual Report - Frontex Consultative Forum on Fundamental Rights - 2017*. Warsaw. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>> [Accessed 30 Jul. 2020].
- Frontex, 2018g. *Fundamental Rights Officer's Observations to return operations conducted in the 1st semester of 2018*. Available at: <[https://www.asktheeu.org/en/request/fro\\_observations\\_to\\_return\\_opera#incoming-23832](https://www.asktheeu.org/en/request/fro_observations_to_return_opera#incoming-23832)> [Accessed 28 Jul. 2020].
- Frontex, 2018h. *Fundamental Rights Officer's Observations to return operations conducted in the 2st [sic!] Semester of 2017*. Available at: <<https://aleph.occrp.org/entities/37536636.c147b5ec25a709a5490db3dc2fa087f2ca80ee13>> [Accessed 28 Jul. 2020].
- Frontex, 2018i. *Serious Incident Report no 788*. Received from third party.
- Frontex, 2018j. *Serious Incident Report no 798*. Released to the authors.
- Frontex, 2018k. *XXI Fundamental Rights Officer Report to the Management Board*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2018l. *XXII Fundamental Rights Officer Report to the Management Board*. Available at: <<https://aleph.occrp.org/entities/39051102.45dad250f4644d016b40182fde543cf86f2e0016>> [Accessed 28 Jul. 2020].
- Frontex, 2019a. *18th Meeting Frontex Consultative Forum on Fundamental Rights*. Released to the authors.
- Frontex, 2019b. *19th Meeting Frontex Consultative Forum on Fundamental Rights*. Released to the authors.
- Frontex, 2019c. *20th Meeting Frontex Consultative Forum on Fundamental Rights*. Released to the authors.
- Frontex, 2019d. *Code of Conduct for all Persons participating in Frontex activities*. Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/Code\\_of\\_Conduct/Code\\_of\\_Conduct\\_applicable\\_to\\_all\\_persons\\_participating\\_in\\_Frontex\\_operational\\_activities.pdf](https://frontex.europa.eu/assets/Key_Documents/Code_of_Conduct/Code_of_Conduct_applicable_to_all_persons_participating_in_Frontex_operational_activities.pdf)> [Accessed 24 Jul. 2020].
- Frontex, 2019e. *Consolidated Annual Activity Report 2018*. Warsaw. Available at: <<https://www.europarl.europa.eu/cmsdata/185405/CAAR%202018.pdf>> [Accessed 30 Jul. 2020].
- Frontex, 2019f. *Frontex condemns any form of inhumane treatment and violence*. [Press Release] Warsaw. Available at: <<https://frontex.europa.eu/media-centre/news->

- release/frontex-condemns-any-form-of-inhumane-treatment-and-violence-KDNxb6> [Accessed 24 Jul. 2020].
- Frontex, 2019g. *Fundamental Rights Officer's Observations to return operations conducted in the 1st semester of 2019*. Available at: <[https://www.asktheeu.org/en/request/fro\\_observations\\_to\\_return\\_opera#incoming-23832](https://www.asktheeu.org/en/request/fro_observations_to_return_opera#incoming-23832)> [Accessed 28 Jul. 2020].
- Frontex, 2019h. *Fundamental Rights Officer's Observations to return operations conducted in the 2nd Semester of 2018*. Available at: <<https://aleph.occrp.org/entities/37536699.fb1fd1d067122976bfe617ccbdeb1da552f5ec74>> [Accessed 28 Jul. 2020].
- Frontex, 2019i. *Management Board Decision 4/2019 of 27 March 2019 on renewing the mandate of the Consultative Forum in its current composition until 31 December 2019*. [online] Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2019/MB\\_Decision\\_4\\_2019\\_on\\_renewing\\_the\\_mandate\\_of\\_the\\_Consultative\\_Forum\\_in\\_its\\_current\\_composition\\_until\\_31\\_December\\_2019.pdf](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2019/MB_Decision_4_2019_on_renewing_the_mandate_of_the_Consultative_Forum_in_its_current_composition_until_31_December_2019.pdf)> [Accessed 28 Jul. 2020].
- Frontex, 2019j. *Mission Report*. Released to the authors.
- Frontex, 2019k. *Serious Incident Report no 10025*. Released to the authors.
- Frontex, 2019l. *Serious Incident Report no 10036*. Released to the authors.
- Frontex, 2019m. *Sixth Annual Report - Frontex Consultative Forum on Fundamental Rights - 2018*. Warsaw. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/documents/>> [Accessed 30 Jul. 2020].
- Frontex, 2019n. *XXIII Fundamental Rights Officer Report to the Management Board*. Released to the authors.
- Frontex, 2020a. *Consultative Forum*. [online] Frontex. Available at: <<https://frontex.europa.eu/fundamental-rights/consultative-forum/general/>> [Accessed 24 Jul. 2020].
- Frontex, 2020b. *Frontex and FRA agree to establish fundamental rights monitors*. [Press Release] Warsaw. Available at: <<https://frontex.europa.eu/media-centre/news-release/frontex-and-fra-agree-to-establish-fundamental-rights-monitors-OBabL6>> [Accessed 24 Jul. 2020].
- Frontex, 2020c. *Frontex launches rapid border intervention on Greek land border*. [Press Release] Warsaw. Available at: <<https://frontex.europa.eu/media-centre/news-release/frontex-launches-rapid-border-intervention-on-greek-land-border-J7k21h>> [Accessed 24 Jul. 2020].
- Frontex, 2020d. *Frontex to launch rapid border intervention at Greece's external borders*. [Press Release] Warsaw. Available at: <<https://frontex.europa.eu/media-centre/news-release/frontex-to-launch-rapid-border-intervention-at-greece-s-external-borders-NL8HaC>> [Accessed 24 Jul. 2020].
- Frontex, 2020e. *Fundamental Rights at Frontex*. [online] Available at: <<https://frontex.europa.eu/fundamental-rights/fundamental-rights-at-frontex/>> [Accessed 28 Jul. 2020].
- Frontex, 2020f. *Lodge a Complaint*. [online] Frontex. Available at: <<https://frontex.europa.eu/contact/lodge-a-complaint/>> [Accessed 24 Jul. 2020].
- Frontex, 2020g. *Management Board Decision 4/2020 of 29 January 2020 amending Management Board Decision 29/2019 of 2 December 2019 on the composition of the Consultative Forum on Fundamental Rights*. Management Board. Available at: <[https://frontex.europa.eu/assets/Key\\_Documents/MB\\_Decision/2020/MB\\_Decision\\_4\\_2](https://frontex.europa.eu/assets/Key_Documents/MB_Decision/2020/MB_Decision_4_2)>

- 020\_amending\_Management\_Board\_Decision\_292019\_of\_2\_December\_2019\_on\_compositionof\_CF.pdf> [Accessed 30 Jul. 2020].
- Frontex, 2020h. *Public Access to Documents Applications*. [online] Available at: <<https://frontex.europa.eu/contact/public-access-to-documents-applications/>> [Accessed 29 Jul. 2020].
- Frontex, 2020i. *Statement by the Frontex Management Board*. [Press Release] Warsaw. Available at: <<https://frontex.europa.eu/media-centre/news-release/statement-by-the-frontex-management-board-z80tXy>> [Accessed 24 Jul. 2020].
- Frontex Consultative Forum on Fundamental Rights, 2016. *2016 Recommendation by the Consultative forum to the Executive director and Management board of the European Border and coast guard Agency (Frontex)*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- Frontex PAD office, 2019. *Your application for access to Frontex documents*. [Letter] Available at: <[https://www.asktheeu.org/en/request/6855/response/22258/attach/4/Lena%20Karamani%20CMS%202019%2000004%200936.pdf?cookie\\_passthrough=1](https://www.asktheeu.org/en/request/6855/response/22258/attach/4/Lena%20Karamani%20CMS%202019%2000004%200936.pdf?cookie_passthrough=1)> [Accessed 30 Jul. 2020].
- Frontex Press Office, 2019. *Replies to your questions*. [E-mail].
- Frontex Press Office, 2020. *FW: Request for interviews for H2020 research project*. [E-mail].
- Geradin, D., Muñoz, R. and Petit, N. eds., 2005. *Regulation through agencies in the EU: A new paradigm of European governance*. Cheltenham, UK; Northampton, MA: Edward Elgar.
- Giannetto, L., 2019. CSOs and EU Border Management: Cooperation or Resistance? The Case of Frontex Consultative Forum. *American Behavioral Scientist*, [online] p.000276421988298. Available at: <<http://journals.sagepub.com/doi/10.1177/0002764219882988>> [Accessed 13 Nov. 2019].
- Gkliati, M. and Rosenfeldt, H., 2018. Accountability of the European Border and Coast Guard Agency: Recent developments, legal standards and existing mechanisms. Available at: <[https://openaccess.leidenuniv.nl/bitstream/handle/1887/85682/Gliati\\_Rosenfeldt\\_2018.pdf](https://openaccess.leidenuniv.nl/bitstream/handle/1887/85682/Gliati_Rosenfeldt_2018.pdf)> [Accessed 30 Jul. 2020].
- Greek Council for Refugees, 2018. *Reports and testimony of systematic pushbacks in Evros*. Available at: <<https://www.gcr.gr/en/ekdoseis-media/reports/reports/item/790-reports-of-systematic-pushbacks-in-the-evros-region>> [Accessed 30 Jul. 2020].
- Greek Government Gazette, 2020. *ΦΕΚ Α'45/2020: Αναστολή της υποβολής αιτήσεων χορήγησης ασύλου*. [online] LawNet. Available at: <<https://lawnet.gr/law-news/fek-a45-2020-anastoli-tis-ypovolis-etiseo/>> [Accessed 24 Jul. 2020].
- Groenleer, M., 2009. *The Autonomy of European Union Agencies*. Delft: Eburon.
- Guild, E., Carrera, S., den Hertog, L. and Parkin, J., 2011. *Implementation of the EU Charter of Fundamental Rights and its Impact on EU Home Affairs Agencies. Frontex, Europol and the European Asylum Support Office*. Brussels: European Parliament.
- Gyollai, D. and Korkut, U., 2019. *Border Management and Migration Controls. Hungary report*. RESPOND Working Paper Series. Glasgow: Glasgow Caledonian University. Available at: <<https://zenodo.org/record/3266442>> [Accessed 30 Jul. 2020].
- Hellenic Police, 2018a. *Συνελήφθησαν 3 διακινητές, οι οποίοι προωθούσαν στο εσωτερικό της χώρας, σε δύο διαφορετικές περιπτώσεις, μη νόμιμους μετανάστες [Three smugglers transporting inland non legal migrants in two different cases from Turkey to Greece arrested]*. [online] Available at:

- <[http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=81417&Itemid=2135&lang=>](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=81417&Itemid=2135&lang=>) [Accessed 24 Jul. 2020].
- Hellenic Police, 2018b. *Συνελήφθησαν 4 διακινητές οι οποίοι μετέφεραν παράνομα από την Τουρκία στην Ελλάδα μη νόμιμους μετανάστες* [Four smugglers transporting non legal migrants from Turkey to Greece arrested]. [online] Available at: <[http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=81427&Itemid=2135&lang=>](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=81427&Itemid=2135&lang=>) [Accessed 24 Jul. 2020].
- Hellenic Republic, Ministry of Citizen Protection, 2018. *Response to the Report of the Commissioner for Human Rights of the Council of Europe Following Her Visit to Greece from 25 to 29 June 2018*. Available at: <<https://rm.coe.int/comments-by-the-greek-authorities-to-the-report-of-the-council-of-euro/16809078d4>> [Accessed 30 Jul. 2020].
- Horii, S., 2012. It is about more than just Training: The Effect of Frontex Border Guard Training. *Refugee Survey Quarterly*, [online] 31(4), pp.158–177. Available at: <<https://academic.oup.com/rsq/article-lookup/doi/10.1093/rsq/hds015>> [Accessed 2 Mar. 2018].
- Horii, S., 2016. The effect of Frontex's risk analysis on the European border controls. *European Politics and Society*, [online] 17(2), pp.242–258. Available at: <<https://www.tandfonline.com/doi/full/10.1080/23745118.2016.1121002>> [Accessed 2 Mar. 2018].
- Howden, D., Fotiadis, A. and Campbell, Z., 2020. Revealed: The great European refugee scandal. *The Guardian: World news*. [online] 12 Mar. Available at: <<https://www.theguardian.com/world/2020/mar/12/revealed-the-great-european-refugee-scandal>> [Accessed 14 Mar. 2020].
- Hruschka, C., 2020. *Frontex and the Duty to Respect and Protect Human Rights*. [online] Verfassungsblog. Available at: <<https://verfassungsblog.de/frontex-and-the-duty-to-respect-and-protect-human-rights/>> [Accessed 24 Jul. 2020].
- Human Rights Watch, 2016. *Hungary: Migrants Abused at the Border*. [online] Available at: <<https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>> [Accessed 24 Jul. 2020].
- Human Rights Watch, 2018. *Greece: Violent Pushbacks at Turkey Border: End Summary Returns, Unchecked Violence*. [online] Available at: <<https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>> [Accessed 24 Jul. 2020].
- Human Rights Watch, 2019. *Re: Frontex Operation on Croatia-Bosnia Herzegovina Border*. [Letter] Available at: <<https://www.hrw.org/news/2019/07/15/human-rights-watch-letter-frontex>> [Accessed 24 Jul. 2020].
- Human Rights Watch, 2020. *Greece: Violence Against Asylum Seekers at Border: Detained, Assaulted, Stripped, Summarily Deported*. [online] Human Rights Watch. Available at: <<https://www.hrw.org/news/2020/03/17/greece-violence-against-asylum-seekers-border>> [Accessed 24 Jul. 2020].
- Hungarian Helsinki Committee, 2016. *Letter to Fabrice Leggeri RE: Ill treatment of migrants at Hungary's southern border*. Available at: <[https://www.asktheeu.org/en/request/operations\\_in\\_hungary#incoming-14832](https://www.asktheeu.org/en/request/operations_in_hungary#incoming-14832)> [Accessed 28 Jul. 2020].
- I Kathimerini, 2019. Μητσοτάκης στην Bild: Δεν φοβάμαι θερμό επεισόδιο με την Τουρκία [Mitsotakis in Bild: I am not afraid of a hot incident with Turkey]. *I Kathimerini*. [online] 15 Dec. Available at: <<https://www.kathimerini.gr/1056349/article/epikairothta/politikh/mhtsotakhs-sthn-bild-den-fovamai-8ermo-epeisodio-me-thn-toyrkia>> [Accessed 24 Jul. 2020].

- International Commission of Jurists, ECRE and Amnesty International, 2016. *Joint briefing on the European Border and Coast Guard Regulation – International Commission of Jurists, ECRE and Amnesty International*. Available at: <[https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Amnesty-ICJ-Joint-Briefing-on-the-European-Border-and-Coast-Guard-Regulation\\_April-2016.pdf](https://www.ecre.org/wp-content/uploads/2016/07/ECRE-Amnesty-ICJ-Joint-Briefing-on-the-European-Border-and-Coast-Guard-Regulation_April-2016.pdf)> [Accessed 24 Jul. 2020].
- Karamanidou, L., 2016. Violence against migrants in Greece: Beyond the Golden Dawn. *Ethnic and Racial Studies*, [online] 39(11), pp.2002–2021. Available at: <<http://www.tandfonline.com/doi/full/10.1080/01419870.2015.1124124>> [Accessed 1 Feb. 2019].
- Karamanidou, L. and Kasperek, B., 2018a. *A Field Trip to North Evros*. [online] RESPOND. Available at: <<https://www.respondmigration.com/blog-1/sanliurfa-gzynz-rh3gn-rzyss-dx24e-kr6wm-y6tcb-szgrr-g6ddk-ldhr-42l9n-aw8wh>> [Accessed 24 Jul. 2020].
- Karamanidou, L. and Kasperek, B., 2018b. *Border Management and Migration Control in the EU*. Available at: <<https://zenodo.org/record/1418601>> [Accessed 30 Jul. 2020].
- Karamanidou, L. and Kasperek, B., 2020. *Hidden infrastructures of the European border regime: The Poros detention facility in Evros, Greece*. [online] RESPOND. Available at: <<https://www.respondmigration.com/blog-1/border-regime-poros-detention-facility-evros-greece>> [Accessed 24 Jul. 2020].
- Kartali, S.-e., 2019. *Turkey's 'Ghosts': Silent Exodus from Erdogan's 'Prison State'*. [online] Balkan Insight. Available at: <<https://balkaninsight.com/2019/10/30/turkeys-ghosts-silent-exodus-from-erdogans-prison-state/>> [Accessed 24 Jul. 2020].
- Kasperek, B., 2010. Borders and populations in flux: Frontex's place in the European Union's migration management. In: *The politics of international migration management*. [online] Houndmills & New York: Palgrave Macmillan. pp.119–140. Available at: <[http://link.springer.com/chapter/10.1057/9780230294882\\_6](http://link.springer.com/chapter/10.1057/9780230294882_6)> [Accessed 3 Dec. 2016].
- Keady-Tabbal, N. and Mann, I., 2020. *Tents at Sea: How Greek Officials Use Rescue Equipment for Illegal Deportations*. [online] Just Security. Available at: <<https://www.justsecurity.org/70309/tents-at-sea-how-greek-officials-use-rescue-equipment-for-illegal-deportations/>> [Accessed 24 Jul. 2020].
- Keller, S., Lunacek, U., Lochbihler, B. and Flautre, H., 2011. *Frontex Agency: Which Guarantees for Human Rights*. Available at: <<https://www.migreurop.org/IMG/pdf/Frontex-PE-Mig-ENG.pdf>> [Accessed 30 Jul. 2020].
- Kilpatrick, J., 2020. *EU: Guns, guards and guidelines: Reinforcement of Frontex runs into problems*. [statewatch analysis] Available at: <<https://www.statewatch.org/analyses/2020/eu-guns-guards-and-guidelines-reinforcement-of-frontex-runs-into-problems/>> [Accessed 23 May 2020].
- Koculu, Z., 2019. *'We were beaten and pushed back by masked men at Turkish-Greek border' – Turkish journalist and asylum seeker*. [online] IPA NEWS. Available at: <<https://ipa.news/2019/04/28/we-were-beaten-and-pushed-back-by-masked-men-at-turkish-greek-border-turkish-journalist-and-asylum-seeker/>> [Accessed 28 Jul. 2020].
- Köster, D., 2020. *In unserer heutigen Innenausschuss-Arbeitsgruppe hatte ich die Möglichkeit, Frontex-Chef Leggeri eine Frage zu den Pushbacks von der EU in die Türkei zu stellen*: [online] Available at: <<https://www.facebook.com/dietmar.fuer.europa/posts/1841500399324332>> [Accessed 24 Jul. 2020].
- Lemberg-Pedersen, M., 2018. Security, industry and migration in European border control. In: *The Routledge Handbook of the Politics of Migration in Europe*, 1st ed. [online] Abingdon & New York: Routledge. pp.239–250. Available at:

- <<https://www.taylorfrancis.com/books/9781315512846/chapters/10.4324/9781315512853-23>> [Accessed 18 Feb. 2019].
- LIBE Committee Meeting, 02 April 2020, 10:00 - 12:00.* 2020. Available at: <[https://multimedia.europarl.europa.eu/en/libe-committee-meeting\\_20200402-1000-COMMITTEE-LIBE\\_vd](https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200402-1000-COMMITTEE-LIBE_vd)> [Accessed 24 Jul. 2020].
- LIBE Committee meeting, 04 June 2020, 16:45 - 18:45.* 2020. Available at: <[https://multimedia.europarl.europa.eu/en/libe-committee-meeting\\_20200604-1645-COMMITTEE-LIBE\\_vd](https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200604-1645-COMMITTEE-LIBE_vd)> [Accessed 24 Jul. 2020].
- LIBE Committee meeting, 06 July 2020, 16:45 - 18:45.* 2020. Available at: <[https://multimedia.europarl.europa.eu/en/libe-committee-meeting\\_20200706-1645-COMMITTEE-LIBE\\_vd](https://multimedia.europarl.europa.eu/en/libe-committee-meeting_20200706-1645-COMMITTEE-LIBE_vd)> [Accessed 28 Jul. 2020].
- Lighthouse Reports, 2020. *Forensic Architecture: The killing of Muhammad Gulzar.* [online] Lighthouse Reports. Available at: <<https://www.lighthousereports.nl/publications/2020/7/16/forensic-architecture-the-killing-of-muhammad-gulzar>> [Accessed 24 Jul. 2020].
- Majcher, I., 2015. *Human Rights Violations During EU Border Surveillance and Return Operations: Frontex's Shared Responsibility or Complicity?* [SSRN Scholarly Paper] Rochester, NY: Social Science Research Network. Available at: <<https://papers.ssrn.com/abstract=2640499>> [Accessed 24 Jul. 2020].
- Majone, G., 1994. The rise of the regulatory state in Europe. *West European Politics*, [online] 17(3), pp.77–101. Available at: <<http://www.tandfonline.com/doi/abs/10.1080/01402389408425031>> [Accessed 24 Jul. 2019].
- Majone, G. ed., 1996. *Regulating Europe.* [online] London & New York: Routledge. Available at: <<https://www.taylorfrancis.com/books/9780203439197>> [Accessed 24 Jul. 2019].
- Majone, G., 1997. From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance. *Journal of Public Policy*, [online] 17(2), pp.139–167. Available at: <<http://www.jstor.org/stable/4007608>>.
- Majone, G., 1999. The regulatory state and its legitimacy problems. *West European Politics*, [online] 22(1), pp.1–24. Available at: <<http://www.tandfonline.com/doi/abs/10.1080/01402389908425284>> [Accessed 24 Jul. 2019].
- Maniar, A., 2016. *Policing at Europe's borders.* [online] Institute of Race Relations. Available at: <<http://www.irr.org.uk/news/language-policing-at-europes-borders/>> [Accessed 24 Jul. 2020].
- Marin, L., 2014a. Policing the EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border. [online] Available at: <[http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=2492063](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2492063)> [Accessed 17 Jan. 2017].
- Marin, L., 2014b. Protecting the EU's Borders from ... Fundamental Rights? Squaring the Circle Between Frontex's Border Surveillance and Human Rights. In: R.L. Holzhaecker and P. Luif, eds. *Freedom, Security and Justice in the European Union: Internal and External Dimensions of Increased Cooperation after the Lisbon Treaty.* [online] New York: Springer-Verlag, pp.75–99. Available at: <<https://www.springer.com/gp/book/9781461478782>> [Accessed 24 Jul. 2020].
- Médecins Sans Frontières, 2017. *MSF denounces the widespread violence on migrants and refugees at the Serbian/Hungarian border.* [online] Available at: <<https://www.msf.org.uk/article/msf-denounces-widespread-violence-migrants-and-refugees-serbianhungarian-border>> [Accessed 24 Jul. 2020].



- Mobile Info Team, 2019. *Illegal Pushbacks at Evros*. [online] Mobile Info Team. Available at: <<https://www.mobileinfoteam.org/pushbacks-en>> [Accessed 24 Jul. 2020].
- Monar, J., 2006. The project of a European border guard: Origins, models and prospects in the context of the EU's integrated external border management. In: M. Caparini and O. Marenin, eds. *Borders and Security Governance. Managing Borders in a Globalised World*, Geneva Centre for the Democratic Control of Armed Forces. [online] Münster: LIT Verlag, pp.174–189. Available at: <[http://www.dcaf.ch/content/download/36799/528815/file/10\\_paper\\_Monar.pdf](http://www.dcaf.ch/content/download/36799/528815/file/10_paper_Monar.pdf)> [Accessed 12 Jul. 2017].
- Monar, J., 2010. Experimentalist Governance in Justice and Home Affairs. In: C.F. Sabel and J. Zeitlin, eds. *Experimentalist governance in the European Union: Towards a new architecture*. Oxford: Oxford University Press, pp.237–260.
- Monella, L.M., 2020. *Frontex operation in Greece "lacks legal basis"*. [online] euronews. Available at: <<https://www.euronews.com/2020/03/10/frontex-border-operation-in-greece-lacks-legal-basis-after-greece-suspends-asylum-law>> [Accessed 24 Jul. 2020].
- Monroy, M., 2020. *Drones for Frontex: Unmanned migration control at Europe's borders*. [statewatch analysis] statewatch.p.6. Available at: <<https://www.statewatch.org/media/documents/analyses/no-354-frontex-drones.pdf>> [Accessed 27 Jul. 2020].
- Moreno-Lax, V., 2018. The EU Humanitarian Border and the Securitization of Human Rights: The 'Rescue-Through-Interdiction/Rescue-Without-Protection' Paradigm. *Journal of Common Market Studies*, 56(1), pp.119–140.
- Mourenza, A., 2019. El oscuro secreto de la frontera oriental de Europa. *El País: Internacional*. [online] 4 Mar. Available at: <[https://elpais.com/internacional/2019/03/03/actualidad/1551607634\\_105978.html](https://elpais.com/internacional/2019/03/03/actualidad/1551607634_105978.html)> [Accessed 24 Jul. 2020].
- Mungianu, R., 2016. *Frontex and Non-Refoulement: The International Responsibility of the EU*. Cambridge Studies in European Law and Policy. [online] Cambridge: Cambridge University Press. Available at: <<https://www.cambridge.org/core/books/frontex-and-nonrefoulement/4686EBAFDE2DAFA5C35C8910EDD1F8CB>> [Accessed 24 Jul. 2020].
- Neal, A.W., 2009. Securitization and risk at the EU border: The origins of FRONTEX. *Journal of Common Market Studies*, [online] 47(2), pp.333–356. Available at: <<http://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.2009.00807.x/full>> [Accessed 3 Dec. 2016].
- Nielsen, N. and Fotiadis, A., 2019. 'Inhumane' Frontex forced returns going unreported. *EUobserver*. [online] 30 Sep. Available at: <<https://euobserver.com/migration/146090>> [Accessed 24 Jul. 2020].
- Pallister-Wilkins, P., 2015. The humanitarian politics of European border policing: Frontex and border police in Evros. *International Political Sociology*, 9(1), pp.53–69.
- Papastavridis, E., 2010. 'Fortress Europe' and FRONTEX: Within or Without International Law? *Nordic journal of international law*, [online] 79(1), pp.75–111. Available at: <<http://booksandjournals.brillonline.com/content/journals/10.1163/157181009x12581245929640>> [Accessed 17 Jan. 2017].
- Pascouau, Y. and Schumacher, P., 2014. *Frontex and the respect of fundamental rights: From better protection to full responsibility*. European Policy Centre, p.4. Available at: <<http://aei.pitt.edu/56473/>> [Accessed 30 Jul. 2020].
- Paul, R., 2017a. Harmonisation by risk analysis? Frontex and the risk-based governance of European border control. *Journal of European Integration*, [online] 39(6), pp.689–706.

- Available at: <<https://www.tandfonline.com/doi/full/10.1080/07036337.2017.1320553>> [Accessed 25 Feb. 2018].
- Paul, R., 2017b. Integration by Risk Analysis? Frontex and the Silent Harmonization of European Border Control. p.32.
- Paul, R., 2018. Risk analysis as a governance tool in European border control. In: A. Weinar, S. Bonjour and L. Zhyznomirska, eds. *The Routledge Handbook of the Politics of Migration in Europe*, 1st ed. [online] Abingdon & New York: Routledge.pp.227–238. Available at: <<https://www.taylorfrancis.com/books/9781315512846/chapters/10.4324/9781315512853-22>> [Accessed 15 Jul. 2019].
- Perkowski, N., 2018. Frontex and the convergence of humanitarianism, human rights and security. *Security Dialogue*, 49(6), pp.457–475.
- Pollak, J. and Slominski, P., 2009. Experimentalist but not Accountable Governance? The Role of Frontex in Managing the EU's External Borders. *West European Politics*, [online] 32(5), pp.904–924. Available at: <<http://www.tandfonline.com/doi/full/10.1080/01402380903064754>> [Accessed 28 Jul. 2019].
- Pro Asyl, 2013. *Pushed back: Systematic human rights violations against refugees in the aegean sea and at the greek-turkish land border*. Available at: <<https://www.proasyl.de/en/material/pushed-back-systematic-human-rights-violations-against-refugees-in-the-aegean-sea-and-the-greek-turkish-land-border/>> [Accessed 30 Jul. 2020].
- Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers.*
- Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.*
- Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.*
- Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.*
- Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.*
- Rijpma, J., 2012. Hybrid agencification in the Area of Freedom, Security and Justice and its inherent tensions: The case of Frontex. *The Agency Phenomenon in the European Union: Emergence, Institutionalisation and Everyday Decision-Making*.
- Rijpma, J., 2016. *The Proposal for a European Border and Coast Guard: Evolution or Revolution in External Border Management?* [Study for the LIBE Committee] Brussels: European Parliament. Available at:

- <[https://openaccess.leidenuniv.nl/bitstream/handle/1887/46425/IPOL\\_STU\(2016\)556934\\_EN.pdf?sequence=1](https://openaccess.leidenuniv.nl/bitstream/handle/1887/46425/IPOL_STU(2016)556934_EN.pdf?sequence=1)> [Accessed 9 Aug. 2017].
- RSA and Pro Asyl, 2019. *Frontex: The Making of a 'Super Agency'*. [online] Available at: <<https://rsaagean.org/wp-content/uploads/2019/12/20191201-rsa-proasyl-frontex-2.pdf>> [Accessed 28 Jul. 2020].
- Sabel, C.F. and Zeitlin, J. eds., 2010. *Experimentalist governance in the European Union: Towards a new architecture*. Oxford: Oxford University Press.
- Schmitz, F., Kalaitzi, A. and Karakaş, B., 2020. Migrants accuse Greece of forced deportations. *DW.COM*. [online] 21 May. Available at: <<https://www.dw.com/en/migrants-accuse-greece-of-forced-deportations/a-53520642>> [Accessed 24 Jul. 2020].
- Sea-Watch, 2019. *Sea-Watch International on Twitter: ". @Frontex rejects #SeaWatch application to be on its consultative forum; evidently they welcome no scrutiny or accountability from human rights defenders in the #Mediterranean. If not on this forum, we ask: When and how will you meaningfully engage NGOs in critical debate?"*. [online] Twitter. Available at: <[https://twitter.com/seawatch\\_intl/status/1204751640156352512](https://twitter.com/seawatch_intl/status/1204751640156352512)> [Accessed 24 Jul. 2020].
- Semsrott, A. and Izuzquiza, L., 2018. *Recommendations for greater transparency of Frontex activities*. [Letter]. Available at: <<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1914-EBCG-2-0/F15674>> [Accessed 30 Jul. 2020].
- Slominski, P., 2013. The Power of Legal Norms in the EU's External Border Control. *International Migration*, [online] 51(6), pp.41–53. Available at: <<https://onlinelibrary.wiley.com/doi/abs/10.1111/imig.12089>> [Accessed 24 Jul. 2020].
- Soguel, D., 2018. Are Greek and EU officials illegally deporting migrants to Turkey? *Christian Science Monitor*. [online] 20 Dec. Available at: <<https://www.csmonitor.com/World/Europe/2018/1221/Are-Greek-and-EU-officials-illegally-deporting-migrants-to-Turkey>> [Accessed 24 Jul. 2020].
- Statewatch and PICUM, 2019. *Data Protection, Immigration Enforcement and Fundamental Rights: What the EU's Regulations on Interoperability Mean for People with Irregular Status*. Available at: <<https://picum.org/wp-content/uploads/2019/11/Data-Protection-Immigration-Enforcement-and-Fundamental-Rights-Full-Report-EN.pdf>> [Accessed 30 Jul. 2020].
- Stavis-Gridneff, M., Kingsley, P., Willis, H., Almukhtar, S. and Browne, M., 2020. 'We Are Like Animals': Inside Greece's Secret Site for Migrants. *The New York Times: World*. [online] 10 Mar. Available at: <<https://www.nytimes.com/2020/03/10/world/europe/greece-migrants-secret-site.html>> [Accessed 24 Jul. 2020].
- Strik, T., 2020. *Tineke Strik on Twitter: "More than 100 Members of European Parliament joined my call on the European Commission to immediately investigate the shootings at the Greek-Turkish border. We cannot tolerate that these findings are simply ignored by the responsible authorities."*. [online] Twitter. Available at: <[https://twitter.com/Tineke\\_Strik/status/1260177579815899137](https://twitter.com/Tineke_Strik/status/1260177579815899137)> [Accessed 24 Jul. 2020].
- Strik, T. and Fotiadis, A., 2020. *Written answers and articles - Webinar 21/04: 'Under Surveillance': Monitoring at the border*. Copy with authors.
- @SyrizaEPInternational, 2020. *SyrizaEPInternational on Twitter: "Letter by @GUENGL MEPs and members of the @EP\_Justice to the head of @Frontex #FRONTEx, on the push-backs in the Aegean Sea. #SYRIZAEP MEP @kostarvanitis co-signs it"*. [online] Twitter. Available at: <<https://twitter.com/Syrizal/status/1271381043363315712>> [Accessed 24 Jul. 2020].
- The Japan Times, 2020. *EU border force Frontex accused of allowing abuse of migrants*. [online] The Japan Times. Available at:

- <<https://www.japantimes.co.jp/news/2019/08/06/world/social-issues-world/eu-border-force-frontex-accused-allowing-abuse-migrants/>> [Accessed 24 Jul. 2020].
- 'The Turkish authorities drove us to the border'. 2020. Available at: <<https://www.bbc.com/news/av/world-europe-51700885/migrants-clash-with-greek-police-at-the-turkish-border>> [Accessed 24 Jul. 2020].
- To Vima, 2020. Rapid response from FRONTEX to Greek request of aid to guard eastern borders. *To Βήμα Online: International*. [online] 2 Mar. Available at: <<https://www.tovima.gr/2020/03/02/international/rapid-response-from-frontex-to-greek-request-of-aid-to-guard-eastern-borders/>> [Accessed 24 Jul. 2020].
- Tritschler, L., 2020. Danish boat in Aegean refused order to push back rescued migrants. *Politico Europe*. [online] 6 Mar. Available at: <<https://www.politico.eu/article/danish-frontex-boat-refused-order-to-push-back-rescued-migrants-report/>> [Accessed 24 Jul. 2020].
- Tsourdi, E.(., 2020. *Beyond the 'migration crisis': Three key challenges for Frontex and EASO*. [online] EU TARN. Available at: <<https://eutarn.blogactiv.eu/2020/02/10/beyond-the-migration-crisis-three-key-challenges-for-frontex-and-easo/>> [Accessed 24 Jul. 2020].
- UN Committee against Torture, 2019. *Concluding observations on the seventh periodic report of Greece*. United Nations. Available at: <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGRC%2fCO%2f7&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGRC%2fCO%2f7&Lang=en)> [Accessed 30 Jul. 2020].
- 'Under surveillance': *Monitoring at the border*. 2020. Available at: <[https://www.youtube.com/watch?v=Av\\_JY8NbGZo](https://www.youtube.com/watch?v=Av_JY8NbGZo)> [Accessed 24 Jul. 2020].
- UNHCR, 2016a. *Hungary: UNHCR concerned about new restrictive law, increased reports of violence, and a deterioration of the situation at border with Serbia*. [online] UNHCR. Available at: <<https://www.unhcr.org/news/briefing/2016/7/5788aae94/hungary-unhcr-concerned-new-restrictive-law-increased-reports-violence.html>> [Accessed 24 Jul. 2020].
- UNHCR, 2016b. *Reporting Serious incidents to Frontex*. Available at: <<https://aleph.occpr.org/entities/37536636.c147b5ec25a709a5490db3dc2fa087f2ca80ee13>> [Accessed 28 Jul. 2020].
- UN News, 2019. *Migrants, asylum seekers detained in Hungary 'deliberately deprived of food': UN human rights office*. [online] UN News. Available at: <<https://news.un.org/en/story/2019/05/1037811>> [Accessed 24 Jul. 2020].
- Wolff, S. and Schout, A., 2013. Frontex as Agency: More of the Same? *Perspectives on European Politics and Society*, [online] 14(3), pp.305–324. Available at: <<http://www.tandfonline.com/doi/abs/10.1080/15705854.2013.817809>> [Accessed 3 Jul. 2020].